SH. MOHMAD USMAN & SONS

DATE LABEL

51	170		
4 9.75			
22 9.75			
28.6.x.			
123			
22-6-81			

*Call No.*_____ *Date*_____

*Acc. No.*_____

K. UNIVERSITY LIBRARY

This book should be returned on or before the last date stamped above. An over-due charge of **.06 P.** will be levied for each day if the book is kept beyond that day.

LAWS OF JAMMU AND KASHMIR

[Being a collection of the State enactments in force in the Jammu and Kashmir State.]

VOL. II.

The Legal Practitioners Act (XXII of 1977) to Criminal Procedure Code (XXXIII of 1989) [1920—1933].

(As amended up to 1st January, 1958 with Addendum).

Published under the authority of Jammu and Kashmir Government.

JAMMU.

Printed at the Ranbir Government Press, Impression 59 for 1,000.

Book Checked
Jan

K UNIVERSITY LIB.
Acc No 114320
Date 19-6-74

PRICE
Rs 1.00

$1.02

ERRATA

J & K Volume II.

Page No.

1 In contents, section 6 *for* "qulifications" *read* "qualifications".

17 In the heading above section 5, *for* "Receeption" *read* "Reception".

17 In line 2 of section 5(4) *for* "[the Government]" *read* "[1][the Government]".

17 In section 6 *for* the figure and brackets "[2][(2)" *read* "(2)[".

45 In the heading of the Act on the page for "977" *read* "1977".

86 In line 3 of section 10, *for* "shall de" *read* "shall be".

88 In line 4 of section 22, after "opinions" *for* "comma" *read* "full stop".

105 In the marginal heading of section 45 *for* "unadministerated" *read* "unadministered".

112 In paragraph (under the heading 'Publication of citation") of section 69 in line 4, *for* "publishted" *read* "published".

117 In line 5 of section 87-A *for* "ceasee" *read* "cease".

133 In line 4 of section 150 *for* "instituteda" *read* "instituted".

153 In line 3 of section 47 after "such" *read* "offence".

155 In line 2 of section 53(1) *for* 'dresence" *read* "presence'.

156 In line 1 of section 57(1) *for* "transporatation" *read* "transportation".

158 In line 1 of clause (p) of section 60 *for* "treatmenet" *read* "treatment".

165 In the marginal heading of section 36 *for* "tudge" *read* "Judge".

222 In the marginal heading of section 11 *for* "delfver" *read* "deliver".

223 In line 3 of illustration to clause (c) of section 11 *for* "complled" *read* "compelled".

241 In the marginal heading of section 39 *for* "canellation" *read* "cancellation".

241 In line 5 of illustration (d) to section 39 *for* "ef" *read* "of".

Page No.

243 In line 1 of section 43 *for* "bindingonly" *read* "binding only".

245 In line 2 of clause (c) of section 54 *for* "jucidial" *read* "judicial".

" In line 2 of illustration (f) to section 54 *for* "use" *read* "sue".

" In line 3 of illustration (g) to section 54 *for* "sur" *read* "sue".

" In line 2 of illustration (i) to section 54 *for* "effcct" *read* "effect".

" In line 1 of illustration (j) *for* "afterwardst" *read* 'afterwards".

247 In line 2 of illustration (c) to section 55 *for* "medica" *read* "medical".

248 In line 2 of section 56 (j) omit "to" after "such."

274 In line 1 of section 11(a) *for* "insruments" *read* "instruments".

281 In the marginal heading to section 30 *for* "eases" *read* "cases".

290 In line 5 of section 49(c) (3) *for* "spolied" *read* "spoiled".

295 In the marginal heading of section 58 *for* "coll" *read* "call".

295 In line 7 of section 61(1) *for* "sdulytamped" *read* "duly stamped" and after "requiring a" *read* "stamp or upon".

296 In line 4 of section 61 (1) on the page, after "into" *read* "consideration".

315 In line 2 of clause (a) of Article 35 *for* "permium" *read* "premium".

317 In clause (b) of Article 39 *for* "accompained" *read* "accompanied".

318 In line 4 clause (a) of Article 41, *for* "exceding" *read* "exceeding".

324 In line 2 (second column) of clause (b) of Article 49 *for* "fo" *read* "for"; and in footnote 2 after "in the" *read* "Government".

326 In line 4 (column second) of Article 54 (a) *for* "froth" *read* "forth".

327 In footnote 2, in line 1, *for* 'Goverument" and *for* "Couucil" *read* "Government" and "Council" respectively.

Page No.

328 In line 1 of the Exemption of section 59 *for* "hare" *read* "Share".

333 In line 2 of section 57 *for* "copiss" *read* "copies"; and in section 62 *for* "wrongfal" *read* "wrongful".

336 In line 6 of paragraph 1 on the page *for* "bedeficiary" *read* "beneficiary".

337 In line 1 of illustration (c) to section 4 *for* "circumstance" *read* "circumstances".

338 In line 2 of illustration (d) to section 6 *for* "amoug" *read* "among".

338 In line 2 of illustration (a) to section 10 *for* "trsut" *read* "trust".

339 In line 3 of section 11 *for* "turst" *read* "trust".

339 In the marginal heading of section 12 *for* "himseif" *read* "himself".

343 In line 3 of clause (f) of section 20 *for* "from to time" *read* "from time to time".

349 In the marginal heading of section 37 *for* "aud" *read* "and".

362 In line 1 of illustration (a) to section 81 *for* "converys' *read* 'conveys".

375 In line 2 of section 3 *for* "agains" *read* "against".

382 In line 1 of illustration to section 30 *for* "A Transfers" *read* "A transfers".

384 In line 3 of illustration to section 35 *for* "forefits" *read* "forfeits".

406 In line 3 of the last paragraph of section 72 *for* "mortagager" *read* "mortgagor".

416 In line 1 of clause (a) of section 108 *for* "leesor" *read* "lessor".

437 In the marginal heading of section 9 *for* "ae" *read* "ac-".

438 In line 3 of section 12 *for* "testments" *read* "testaments"; and in footnote 1, in line 2 *for* "Gazettee" *read* "Gazette".

442 In line 3 of section 25(3) *for* "transter" *read* "transfer".

446 In line 6 of section 38 *for* "Civl" *read* "Civil".

452 In the last line of section 2 *for* "superintendant" *read* "Superintendent".

456 In line 2 of section 46 *for* "ither" *read* "there".

465 In line 4 of section 20(3) *for* "specifed" *read* "specified".

Page No.

477 In line 1 of the page *for* "gainst" *read* "against".
478 In line 2 of the last paragraph of section 2 *for* "Lambards" *read* "Lambardars".
479 In line 3 of section 5(4) *for* "exted" *read* "extend".
515 In line 3 of section 44(2) *for* "expry" *read* "expiry".
516 In line 1 of the page *for* "Provience" *read* "Province".
518 In the marginal heading of section 47 *for* "restristtons" *read* "restrictions"; and in line 7 of section 47(2) *for* "entitle" *read* "entitled".
" In footnote 1 *for* "amendm" *read* "amendments".
521 In line 2 of footnote 3 *for* "seotion" *read* "section".
527 In line 3 of section 63(2) after "time" *read* "before".
535 In line 2 of clause (d) of section 80 after "by" *read* "the"
535 In line I3 of section 82(1) *for* "been titled" *read* "be entitled".
538 In line 3 of clause (f) of section 85(3) *for* "fransfer" *read* "transfer".
540 In line 1 of section 85-A(2) *for* "nnder" *read* "under"; and in line 5 *for* "ther" *read* "the".
542 In line 1 of section 90(2) *for* "fourth–" *read* "forth–" and in footnote 1 *for* "pelet d" *read* "deleted".
544 In line 2 of clause (b) of section 95(1) *for* "with" *read* "which",
546 In line 4 of clause (a) of section 98 (1) *for* "accupancy" *read* "occupancy".
551 In line 1 of clause (r) *for* "helding" *read* "holding" and in line 1 of clause (s) *for* "agreemeut" *read* "agreement".
553 In line 1 of clause (i) *for* "whs" *read* "was".
558 In section 4 *for* "Jurisdictien" *read* "Jurisdiction".
559 In line 1 of the preamble *for* "expendient" *read* "expedient".
" In the marginal heading of section 2 *for* "Definitians" *read* "Definitions".
560 In line 3 of clause (b) of section 3 after "plaintiff" delete full-stop.
563 In line 6 of section 6 *for* "transfereed" *read* "transferred".
565 In footnote 2 *for* "relattered" *read* "relettered".
" In line 1 of footnote 3 *for* "publihsed" *read* "published".
" In foot-note 7 *for* "ibdi" *read* "ibid".

Page No.

566 In line 9 of section 11 *for* "some" *read* "same".
" In the marginal heading of section 12 *for* "nto" *read* "into".
568 In the marginal heading of section 20 *for* "Conrt" *read* "Court".
570 In line 1 of section 31 *for* "Regulatfon" *read* "Regulation".
571 In line 1 of the preamble *for* "expendient" *read* "expedient".
574 In line 1 of the page *for* "privilges" *read* "privileges".
575 In line 1 of the page *for* "Superintondent" *read* "Superintendent".
" In line 9 of section 14 *for* "lawfull" *read* "lawful".
" In line 7 of section 15(1) *for* "coduct" *read* "conduct"
578 In line 5 of section 19 *for* "authorties" *read* "authorities".
" In the marginal heading of section 21 *for* "officerss" *read* "officers".
579 In line 4 of section 24 *for* "intellingence" *read* "intelligence".
580 In line 2 of section 27(3) *for* "preffered" *read* "preferred".
" In the marginal heading of section 28 *for* "fno" *read* "if no".
" In line 5 of section 29 *for* "beeen" *read* "been".
582 In line 2 of item Second of section 36 *for* "animals" *read* "animal",
584 In line 3 of section 41 *for* "from" *read* "form".
585 In the heading of the "State Subject Definition Notification" in line 2 (date) after "20th April," *read* "1927".
595 In line 7 of section 9 *for* "behal" *read* "behalf".
601 In foot-note 1 after "for" *read* "His Highness".
609 In the line after clause (a) of section 6 *for* "demarcated" *read* "demarcated".
610 In line 2 of the second proviso to section 7 *for* "hall" *read* "shall".
612 In foot-note 3 *for* "Higlness" *read* "Highness".
614 In the paragraph after clause (i) of section 15 *for* "thar" *read* "that",
617 In line 1 of the page after "fraudulently" *read* "full-stop" *for* "comma".

Page No.

619 In footnote 1 *for* "secion" *read* "section 3".

620 In line 2 of the second paragraph of section 36 *for* "sent" *read* "send".

" In section 38(1), in line 4 *for* "offic" *read* "office" and in clause (a) of section 38(1), in line 2 *for* "spicion" *read* "suspicion".

627 In line 1 of section 3(1)(a) *for* "prescribible" *read* "prescribe".

630 In line 2 of section 2 *for* "contexts" *read* "context"

632 In section 29 *for* "tatement" *read* "statement".

634 In line 4 of section 3 *for* "thie" *read* "the".

639 In line 8 of sub-section (3) of section 9 *for* "represetations" *read* "representations".

675 In section 399 *for* "commait" *read* "commit".

676 In section 431 *for* "rivier" *read* "river".

677 In section 454 *for* "ordr" *read* "order".

704 In line 1 of illustration (a) to section 98 *for* "madenss" *read* "madness".

705 In the marginal heading of section 100 *for* "defenee" *read* "defence" and in the marginal heading of section 102 *for* "rigth" *read* "right".

721 In section 141——

In para fourth, in line 4 *for* "incroporeal" *read* "incorporeal".

In para fifth, in line 2 *for* "lgally" *read* "legally" and In line 3 *for* "entitledot" *read* "entitled".

734 In line 3 of the page *for* "ntentionally" *read* "intentionally".

739 In the marginal heading of section 190-A *for* "Dssemination" *read* "Dissemination".

742 In line 2 of section 194 *for* "is" *read* "it".

744 In the marginal heading of section 201 *for* "giviug" *read* "giving".

749 In the marginal heading of section 214 *for* "iconsideration" *read* "consideration".

763 In line 3 of section 260 after "by" *read* "Government".

767 In line 1 of section 277 *for* "foulsir" *read* "fouls".

771 In line 1 of paragraph after clause (e) of section 292 *for* "ieither" *read* "either".

774 In line 4 of illustration (a) to section 299 for "homicde" *read* "homicide".

Page No.

774 In line 4 of illustration (b) to section 299 for "iniuces" *read* "induces"
780 In line 6 of section 315 *for* "borne" *read* "born".
790 In line 2 of illustration (c) to section 350 *for* "palanqniu" *read* "palanquin".
791 In line 5 of section 353 *for* "dis" *read* "his".
792 In the marginal heading of section 356 *for* "oarried" *read* "carried".
794 In line 1 of footnote 1 after section *read* "366".
796 In last line of Explanation 2 to section 372 after "a" *read* "quasi-marital".
798 In line 4 of Explanation 5 to section 378 *for* "ro" *read* "or".
802 In last line of section 386 *for* "te" *read* "to".
" In line 8 of section 388 *for* "dunished" *read* "punished".
" In line 9 of section 389 after "extend" insert "to".
806 In line 4 of paragraph 3 of Explanation 2 to section 403 *for* "doos" *read* "does".
" In line 3 of illustration (b) to Explanation 2 after "the" *read* "note".
808 In illustration (f) to section 405, in line 2 *for* "committee" *read* "committed".
812 In the marginal heading of section 424 *for* "or" *read* "of".
833 In line 4 of section 495 *for* "for" *read* "for—".
" In the marginal heading of section 496 *for* "frau" *read* "frau—".
843 In line 1 of section 14 after "in" *read* "possession".
863 In section 42 *for* "Magistratesbls" *read* "Magistrate".
870 In line 4 of section 195 *for* "prosecetion" *read* "prosecution".
882 In the heading of Chapter XLIV-A, in line 2 *for* "EUROPEBN" *read* "EUROPEAN".
884 In line 1 of the preamble *for* "eonsolidate" *read* "consolidate".
897 In line 3 of section 37 *for* "fitst" *read* "first".
898 In line 6 of section 44 (1) after "144" *read* "145".
903 In line 2 of the page after "suspected" *read* "of".
914 In the marginal heading of section 93-A *for* "prosesses" *read* "processes".
933 In the marginal heading of section 132, in line 2 *for* "section" *read* "secution".

Page No.

933 In line 4 of section 131 *for* "Artmy" *read* "Army".
935 In line 4 of the marginal heading of section 135 *for* "ury" *read* "jury".
936 In line 4 of section 139(3), delete "comma" after "reliable".
946 In line 1 of clause (b) of section 157(1) delete one "to" after "appear".
956 In line 6 of the page after "being so" *read* "forwarded".
963 In line 4 of clause (c) of section 195(1) *for* "do" *read* "to"
977 In line 3 of second proviso to section 216 *for* "delay" *read* "delay".
998 In line 7 of section 265(2) after "member" *read* "of".
1007 In line 3 of section 299(d) *for* "ascertainde" *read* "ascertained".
1008 In marginal heading of section 302 *for* "procedure" *read* "procedure".
1011 Delete the portion above the heading "*I .Procedure in Case of Previous Convicion*". being superfulous.
1042 In line 2 of section 380 *for* "fist" *read* "first".
1044 In line 4 of section 386 (3) *for* "Purocedure" *read* "Procedure".
1047 In line 2 of the marginal heading of section 395 *for* "inflacted" *read* "inflicted".
1069 In line 5 of section 478 after "and" *read* "the" and in line 6 *for* "Couert" *read* "Court".
1071 In line 6 of section 479-A(4) *for* "man" *read* "may" and in line 12 *for* "Magistraet" *read* "Magistrate".
„ In line 7 of section 480 *for* "thanks" *read* "thinks" and in line 9 *for* "10" *read* "to".
1083 In line 6 of section 509 *for* "deponentis" *read* "deponent is".
1097 In line 5 of section 536 *for* "evidenee" *read* "evidence".
1107 In line 3 of the page after "without" *read* "sureties".
1113 In column 8 of section 120-B *for* word "triabe" *read* "triable".
1121 (a) in column 7 of section 174 *for* word "ofboth" *read* "of both".
(b) In column 7 of section 175 *for* word "ofrupees" *read* "of rupees".

Page. No.

(c) In column 8 of section 175 *for* word "isc omitted" *read* "is committed".
(d) In column 7 of section 175 *for* word "fiue" *read* fine".
(e) In column 1 below section 174 *for* figure "15" *read* "175".

1124 In heading of column 6 *for* word "compondable" *read* "compoundable" and in column 1 below section 190 *for* "019" *read* "190".

1125 In column 7 of section 195 *for* "sameas" *read* "same as".

1129 (a) In column 2 of section 215 *for* word "appr-ension" *read* "apprehension".
(b) In column 7 of section 216 after "imprisonment" *read* "of"
(c In footnote after "published" *read* "in".

1133 (a) In column 7 of section 232 *for* word "impriso-ment" *read* "imprisonment".
(b) In column 8 of section 237 *for* word "Magitrate" *read* "Magistrate".

1136 In column 2 of section 257 *for* word "counerfeiting" *read* "counterfeiting".

1148 In column 3 of section 352 *for* word "arret" *read* "arrest".

1155 In footnote *for* word "substitnted" *read* "substituted".

1160 In column 2 of section 43: *for* word "impossable" *read* "impassable".

1166 In heading of column 3 *for* word "maarrest" *read* "may arrest".

1180 (a) In line 3 of Schedule 5(1) *for* word "pleade" *read* "pleader".
(b) In line 2 of Schedule 5(ii) *for* word "exceute" *read* "execute".

1196 In marginal heading of charges (5) *for* word "oo" *read* "on".

ALPHABETICAL LIST OF ACTS, ETC., INCORPORATED IN THIS VOLUME.

Volume II.

Subject.	Page.
Agriculturists' Relief Act (I of 1983)	558
Civil Courts Act (XLVI of 1977)	434
Code of Criminal Procedure (XXIII of 1989)	862
Court of Wards Act (LII of 1977)	454
Food Control Act (I of 1986)	590
Forest Act (II of 1987)	603
Forest (Sale of Timber) Act (III of 1987)	626
Infant Marriages Prevention Act (I of 1985)	587
Juvenile Smoking Act (II of 1986)	597
Kuth Act (I of 1978)	476
Legal Practitioners Act (XXIII of 1977)...	1
Legal Practitioners (Fees) Act (VII of 1988)	629
Lunacy Act (XXV of 1977)	11
Majority Act (XXVI of 1977)	43
Muslim Dower Act (XLIV of 1977)	433
Negotiable Instruments Act (XXVII of 1977) (For limited purposes only)	45
Official Secrets, *See* "State Official Secrets"	430
Partition Act (XXX of 1977)	134
Poisons Act (XXXIV of 1977)	171
Police Act (II of 1983)	569
Press and Publications Act (I of 1989)	631
Primary Education Act (III of 1986)	599
Prison's Act (XXXI of 1977)	137

Subject.	Page.
Prisoners Act (XXXIII of 1977)	159
Probate and Administration Act (XXIX of 1977) ...	89
Public Servants (Inquiries) Act (XXVIII of 1977)... ...	83
Ranbir Penal Code (XII of 1989)	659—
Registration Act (XXXV of 1977)	176
Religious Endowments Act (L of 1977)	451
Sapphire Act (XVI of 1989)	842
Special Procedure Notification for Certain Offences (No. 13-L of 1931)	628
Specific Relief Act (XXXVII of 1977)	217
Stamp Act (XL of 1977)	264
State Official Secrets Act (XLIII of 1977)	430
State Soldiers (Litigation) Act (V of 1989)... ... ... [For certain purposes only.]	653
State Subject Definition Notification I-L 84	585
Succession Certificate (Act XXXIX of 1977)	253
Succession (Property Protection) Act (XXXVI of 1977)	210
Suits Valuation Act (XXXVIII of 1977)...	249
Tenancy Act (II of 1980)	483
Transfer of Property Act (XLII of 1977)...	367
Trusts Act (XLI of 1977)	331
Usurious Loans Act (XLVII of 1977)	447
Water Mills (Jandar and Gharat) Act (XVII of 1989) ...	848

CHRONOLOGICAL LIST OF ACTS, ETC., INCORPORATED IN THIS VOLUME.

Volume II.

Name of year.	Short title or Subject	Page.
1977	The Legal Practitioners Act (XXIII of 1977) ...	1
1977	The Lunacy Act (XXV of 1977)	11
1977	The Majority Act (XXVI of 1977)	43
1977	The Negotiable Instruments Act (XXVII of 1977) (For limited purposes only)	45
1977	The Public Servants (Inquiries) Act (XXVIII of 1977)...	83
1977	The Probate and Administration Act (XXIX of 1977)...	89
1977	The Partition Act (XXX of 1977)...	134
1977	The Prisons Act (XXXI of 1977)...	137
1977	The Prisoners Act (XXXIII of 1977)	159
1977	The Poisons Act (XXXIV of 1977)	171
1977	The Registration Act (XXXV of 1977)	176
1977	The Succession (Property Protection) Act (XXXVI of 1977)	210
1977	The Specific Relief Act (XXXVII of 1977)	217
1977	The Suits Valuation Act (XXXVIII of 1977) ...	249
1977	The Succession Certificate Act (XXXIX of 1977) ...	253
1977	The Stamp Act (XL of 1977)	264
1977	The Trusts Act (XLI of 1977)	331
1977	The Transfer of Property Act (XLII of 1977) ...	367
1977	The State Official Secrets Act (XLIII of 1977) ...	430
1977	The Jammu and Kashmir State Muslim Dower Act (XLIV of 1977)	433
1977	The Jammu and Kashmir State Civil Courts Act (XLVI of 1977)	434
1977	The Usurious Loans Act (XLVII of 1977)	447

Name of year.	Short title or Subject.	Page.
1977	The Religious Endowments Act (L of 1977)... ...	451
1977	The Jammu and Kashmir Court of Wards Act (LII of 1977)	454
1978	The Jammu and Kashmir State Kuth Act (I of 1978)...	476
1980	The Jammu and Kashmir Tenancy Act (II of 1980)...	483
1983	The Agriculturists' Relief Act (I of 1983)	558
1983	The Police Act (II of 1983)	569
1984	The State Subject Definition Notification (No.1-L/1984).	585
1985	The Infant Marriages Prevention Act (I of 1985) ...	587
1986	The Food Control Act (I of 1986)	590
1986	The Juvenile Smoking Act (II of 1986)	597
1986	The Primary Education Act (III of 1986)	599
1987	The Jammu and Kashmir Forest Act (II of 1987) ...	603
1987	The Jammu and Kashmir Forest(Sale of Timber) Act (III of 1987)	626
1988	The Special Procedure Notification for Certain Offences (No. 13-L of 1931)	628
1988	The Legal Practitioners (Fees) Act (VII of 1988) ...	629
1989	The Jammu and Kashmir State Press and Publications Act (I of 1989)	631
1989	Notification No. 13-L/1989	652
1989	The State Soldiers' Litigation Act (V of 1989) [For certain purposes only.] ...	653
1989	The Jammu and Kashmir State Ranbir Penal Code (Act XII of 1989)	659
1989	The Sapphire Act (XVI of 1989)	842
1989	The Water Mills (Jandar and Gharat) Act (XVII of 1989)	848
1989	The Code of Criminal Procedure (Act XXIII of 1989) ...	862

THE LEGAL PRACTITIONERS ACT, 1977 (1920 A. D.)

Act No. XXIII of 1977.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Short title, commencement and extent.
2. Saving of rules and appointments etc.
3. Interpretation clause.

CHAPTER II.

OF ADVOCATES AND VAKILS

4. Vakils and advocates.
5. Advocates, vakils or pleaders not on the roll of the High Court.

CHAPTER III.

OF PLEADERS.

6. Power to make rules as to qualifications, etc. of pleaders. Publication of rules.
7. Certificates to pleaders.
8. Pleaders on enrolment may practise in Courts and Revenue offices.
9. Omitted.
10. No person to practise as pleader unless qualified.

SECTION.

11. Omitted.
12. Suspension and dismissal of pleaders convicted of criminal offence.
13. Suspension and dismissal of pleaders guilty of unprofessional conduct.
14. Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue office. Suspension pending investigation.
15. Power to call for record in case of acquittal under section 14.
16. Omitted.

CHAPTER IV.

17 to 24. Omitted.

CHAPTER V.

OF CERTIFICATES.

25. Fee for certificates.
26. Dismissed practitioners to surrender certificates.

SECTION.

CHAPTER VI,

OF THE REMUENRATION OF LEGAL PRACTITIONER.

27. High Court and Revenue Minister to fix fees on civil and revenue proceedings.

28 to 31. Repealed.

CHAPTER VII.

PENALTIES.

32. On persons illegally practising as pleaders.

33. On suspended or dismissed pleader, failing to deliver certificate.

34. On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Revision of fines.

SECTION.

36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

37. High Court to appoint examiners.

38. Omitted.

39. Omitted.

40. Pleaders not to be suspended or dismissed without being heard.

41. Repealed.

42. Saving of rules issued by Revenue Department.

THE FIRST SCHEDULE—
Omitted.

THE SECOND SCHEDULE—

VALUE OF STAMPS FOR CERTIFICATES.

THE LEGAL PRACTITIONERS ACT, 1977 (1920 A. D.)

Act No. XXIII of 1977.

[*Sanctioned by His Highness the Mahraja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1 *dated* 8*th April*, 1925, (*Notification No.* 14-*L*/81).]

An Act to consolidate and amend the Law relating to Legal Practitioners.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the State; It is heredy enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, commencement and extent.

1. This Act may be called the Legal Practitioners Act, 1977 and shall come into force on 1st day of Baisakh 1978.

Saving of rules and appointments, etc.

2. All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any rules heretofore in force shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

Interpretation clause.

3. In this Act unless there be something repugnant in the subject or context—

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated ;

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes ;

"Revenue Office" includes all Courts other than Civil Courts trying suits under any Act for the time being in force relating to landholders and their tenants or agents ;

"Legal Practitioner" means an advocate, vakil, a pleader or revenue agent ;

[1]["Tout" means a person,—

(*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business ; or

(*b*) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of Revenue offices, or railway stations, landing stages, lodging places or other places of public resort.]

---

1. Definition of "Tout" substituted by Act VI of 1988.

CHAPTER II.

OF ADVOCATES AND VAKILS.

Advocates and Vakils.

[1][**4.** Every person now or hereafter entered as an advocate or vakil on the roll of the High Court under His Highness' Order No. 1 dated 20th March 1928, constituting the High Court of Judicature shall be entitled to practise in all Civil and Criminal Courts of the State and subject to any law or rules for the time being in force in all Revenue Courts and offices of the State : Provided that no such vakil shall be entitled to practise under this section before the High Court on its original side.]

Advocates, vakils, or pleaders not on the roll of the High Court.

5. No advocate, vakil or pleader, not on the roll of the High Court, shall be allowed to appear, act or plead in any State Court or Revenue office except—

(*i*) on payment in advance of fee prescribed in this behalf ; and

(*ii*) with the previous sanction of the High Court or of the Revenue Minister if the case be pending in a Revenue Court or office of the Revenue Minister [3][***].

CHAPTER III.

OF PLEADERS.

Power to make rules as to qualifications, etc. of pleaders.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts and of the Revenue Offices ;

(*b*) Omitted.

(*c*) the fees to be paid for the examination and admission of such persons ; and

(*d*) suspension and dismissal of such pleaders.

1. Section 4 substituted by Notification 19-L/86 published in Government Gazette dated 7th Chet, 1986.

2. Now Act XIV of 1996.

3. Proviso to section 5 (ii) repealed by Notification 19-L/86 published in Government Gazette dated 7th Chet, 1986.

All such rules after approval by [1][the Government] shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon have the force of law.

Publication of rules.

7. On the admission, under section 6, of any person as a pleader, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person ; authorising him to practise up to the end of the current year in the Courts and the Revenue offices specified therein.

Certificate to pleaders,

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the High Court.

On every such renewal, the certificate then in possession of such pleader shall be cancelled and retained by the High Court.

Every certificate so renewed shall be signed by the Registrar of the High Court, and shall continue in force up to the end of the current year.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or Revenue office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court ; and, subject to such rules consistent with this Act as the High Court or the Revenue Minister may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly : and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue office subordinate thereto.

Pleaders on enrolment may practise in Courts and Revenue offices.

9. Omitted.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader in any Court unless he holds a certificate issued under section 7 and has been enroled in such Court or in some Court to which it is subordinate.

No person to practise as pleader unless qualified,

11. Omitted.

12. The High Court may suspend or dismiss any pleader holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader.

Suspension and dismissal of pleaders convicted of criminal offence.

1. In Section 6 word "the Goverument" "substituted for "His Highness" *vide* **Act X of 1996.**

Suspension and dismissal of pleaders guilty of unprofessional conduct.

13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader holding a certificate as aforesaid—

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions ; or

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty ; or

(*c*) who tenders, gives or consents to the retention out of any fee-paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader ; or

(*d*) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader through or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given ; or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36 ; or

(*f*) for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue office.

14. If any such pleader practising in any subordinate Court or in any Revenue office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice, that on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court ; and the High Court may acquit, suspend or dismiss the pleader.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate or with his sanction any Magistrate

subordinate to him, and any Revenue authority not inferior to a [1][Collector] or with the [1][Collector]'s sanction any Revenue officer subordinate to him may, pending the investigation and the orders of the High Court, suspend from practice any pleader charged before him or it under this section.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge ;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge ;

(*c*) when made by a Magistrate of the District, be made through the Sessions Judge ;

(*d*) when made by any Revenue officer subordinate to the Revenue Minister, be made through such Revenue authorities as the Revenue Minister may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made.

15. The High Court, in any case in which a pleader has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to call for record in case of acquittal under section 14.

16. Omitted.

CHAPTER IV.

17. to **24.** Omitted.

CHAPTER V.

OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed and of such description as [2][the Government] may, from time to time, prescribe :

Fee for certificates.

1. Substituted *vide* Act III of 2008 for "Governor".
2. In section 25 "the Government" substituted for "His Highness" *vide* Act X of 1996.

Provided that a certificate issued on or after the first day of Katik in any year may be written on stamped paper of half the value so prescribed.

Dismissed practitioners to surrender certificates.

26. When any [1][legal practitioner] is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Revenue Minister (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF [1][LEGAL PRACTITIONER.]

High Court and Revenue Minister to fix fees on civil and revenue proceedings.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, or vakil, upon all proceeding (*a*) on the appellate side of such Court, and (*b*) in subordinate Courts.

The Revenue Minister shall, from time to time fix and regulate the fees payable upon all proceedings in the Revenue offices by any party in respect of the fees of his adversary's advocate, pleader or vakil.

Tables of the fees so fixed shall be published in the Jammu and Kashmir Government Gazette.

28. to **31.** [2]Repealed.

CHAPTER VII.

PENALTIES.

On persons illegally practising as pleader.

32. Any person who practises in any Court or Revenue office in contravention of the provision of section 10 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

1. *Vide* Notification No. 19-L of 1986 published in Government Gazette dated 7th Chet, 1986 substituted for "pleader".
2. Repealed *vide* Act No. VII of 1988.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, failing to deliver certificate.

33. Any pleader, failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or Officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

34. Any pleader who, under the provisions of this Act, has been suspended or dismissed and who, during such suspension or after such dismissal, practises as a pleader in any Court or Revenue office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court and by the Revenue Minister where the order has been passed by an officer subordinate to such Authority.

Power to frame and publish lists of touts.

36. (1) The High Court, every District Judge, Sessions Judge, District Magistrate and every Revenue officer, not being below the rank of a [1][Collector] [2][*]may frame and publish lists of persons proved to their or his satisfaction [3][or to the satisfaction of any subordinate Court,] by evidence of general repute or otherwise, habitually to act as touts and may, from time to time, alter and amend such lists.

[4][EXPLANATION.— The passing of a resolution declaring any person to be or not to be a tout by a majority of the members present at a meeting specially convened for the purpose, of an association of persons entitled to practise, as

1. Substituted *vide* Act III of 2008 for "Governor".
2. Words "of a district" repealed by Notification 19-L/86 published in Government Gazette dated 17th Chet, 1986.
3. Words within brackets in section 36 added *vide* Act No. VI of 1988.
4. Explanation to section 36 (i) added *vide* Acr VI of 1988.

legal practitioners in any Court or Revenue office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

[1][2-A] Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an enquiry in regard to such persons ; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and after giving each such person an opportunity of showing cause as provided in sub-section (2) shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout ; and that authority may include the name of any such person in the list of touts framed and published by that authority :

Provided that such authority shall hear any such person whom before his name has been so included appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e).

[2][(6) Any person who acts as a tout whilst his name is included in any such list shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or both.]

CHAPTER VIII.

MISCELLANEOUS.

High Court to appoint examiners.

37. To facilitate the ascertainment of the qualifications mentioned in section 6, the High Court shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38 and **39** Omitted.

1. Section 36 (2-A) added *vide* Act VI of 1988.
2. Section 36 (6) added *vide* Act No. VI of 1988.

40. Notwithstanding anything hereinbefore contained, no pleader, shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

Pleaders, etc. not to be suspended or dismissed without being heard.

41. [1]Repealed.

42. Nothing herein contained shall effect any rules issued by the Revenue Department for appearance of legal practitioners in a Revenue Court or office.

FIRST SCHEDULE—Omitted.

---

[2][SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(*See section* 25).

For a certificate authorising the holder to practise—

(*a*) As a Pleader ... [3][Rupees fifteen per annum.]
(*b*) As a Vakil ... [4][Rupees thirty per annum.]
(*c*) As an Advocate ... Rupees [5][300] in a lump sum.]

THE LUNACY ACT, 1977 (1920 A. D.)
Act No. XXV of 1977.

CONTENTS.

SECTION. SECTION.

PART I.

Preliminary.

CHAPTER I.

1. Omitted.
2. Savings.
3. Definitions.

PART II.

Reception, Care and Treatment, of Lunatics.

CHAPTER II.

RECEPTION OF LUNATICS.

4. Reception of persons in asylum.

1. Repealed *vide* Notification No. 19-L/1986 published in Government Gazette dated 7th Chet, 1986.
2. Second Schedule substituted by Notification No. 19-L/1986 published in Government Gazette dated 7th Chet, 1986.
3. Substituted *vide* Act V of 2000 for "Rupees twenty five per annum".
4. Substituted *vide* Act V of 2000 for "Rupees fifty per annum".
5. Substituted *vide* Act XVII of 1998 for "750".

SECTION.

Reception orders on petition.

5. Application for reception order.

6. Application by whom to be presented.

7. Procedure upon petition for reception order.

8. Detention of alleged lunatic pending inquiry.

9. Consideration of petition.

10. Order.

11. Further provisions as to reception orders on petition.

11-A. Power to appoint substitute for the person upon whose application a reception order has been made.

Reception orders otherwise than on petition.

12. Omitted.

13. Powers and dutics of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

14. Reception order in case of wandering and dangerous lunatics.

15. Order in case of lunatic cruelly treated or not under proper care and control.

16. Detention of alleged lunatic pending report by medical officer.

17. Omitted.

SECTION.

Further provisions as to reception orders and medical certificate.

18. Medical certificates.

19. Time and manner of medical examination of lunatic.

20. Authority for reception.

21. Copy of reception order to be sent to person in charge of asylum.

22. Omitted.

Detention of lunatics pending removal to asylum.

23. Detention of lunatics pending removal to asylum.

Reception and detention of criminal lunatics.

24. Reception and detention of criminal lunatics.

Reception after inquisition.

25. Reception after inquisition.

26. Order for payment of cost of maintenance of lunatic.

Amendment of order or certificate.

27. Amendment of order or certificate.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

28. Appointment of visitors.

29. Monthly inspection by visitors,

SECTION.

30. Inspection of criminal lunatics by Inspector General or visitors.

31. Order of discharge from asylum by visitors.

32. Discharge of lunatics in other cases.

33. Order of discharge on undertaking of relative for due care of the lunatic.

34. Discharge of person subsequently found on inquisition not to be of unsound mind.

Removal of lunatics.

35. Removal of lunatics and criminal lunatics.

Escape and re-capture.

36. Order to justify detention and re-capture after escape.

———

PART III.

Judicial Inquisition as to Lunacy

———

CHAPTER IV.

37 to 61. Omitted.

———

CHAPTER V.

PROCEEDINGS IN LUNACY.

Inquisition.

62. Power of District Court to institute inquisition as to persons alleged to be lunatic.

SECTION.

63. Application by whom to be made.

64. Regulation of proceedings of District Courts.

65. Inquistion by District Court and finding thereon.

66. Inquisition by subordinate Court on commission issued by District Court, and proceedings thereon.

Judicial powers over person and estate of lunatic.

67. Custody of lunatics and management of their estates.

68. Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

69. Power to direct Collector to take charge of person and estate of lunatic in certain cases.

70. Control over proceedings of Collector.

71. Power of District Court to appoint guardian and manager and take security from manager.

72. Restriction on appointment of legal heir of lunatic to be guardian of his person.

73. Remuneration of managers and guardians.

74. Duties of guardian.

75. Powers of manager.

76. Manager to furnish inventory and annual accounts.

SECTION.

77. Proceedings if accuracy of inventory or accounts is impugned.

78. Payment into public treasury and investment of proceeds of estate.

79. Relative may sue for an account.

80. Removal of manager or guardian.

81. Penalty on manager for refusing to deliver accounts or property.

82. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

83. Appeals.

PART IV.

Miscellaneous.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

84. Government may establish or licence the establishment of asylums.

85. Omitted.

CHAPTER VII.

EXPENSES OF LUNATICS.

86. Payment of cost of maintenance in licensed asylum in certain cases by Government.

SECTION.

87. Application of property in the possession of a lunatic found wandering.

88. Application to Civil Court for order for the payment of cost of maintenance out of the lunatics estate, or by person bound to maintain him.

89. Order of Court and enforcement thereof.

90. Saving of liability of relatives to maintain lunatic.

CHAPTER VIII.

RULES.

91. Power of the Government to make rules.

92. Publication of rules.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

93. Penalty for improper reception or detention of lunatic.

94. Provision as to bonds.

95. Pension of lunatic payable by Government.

96. Use of forms in Schedule.

97. Protection to persons acting under Act.

98. }
99. } Omitted.
100. }
101. }

SCHEDULE I—FORMS.

THE LUNACY ACT, 1977 (1920 A. D.)

Act No XXV of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372 *dated* 11*th September,* 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925, (*Notification* 14-*L*/81).]

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

CHAPTER I.

[1]**1.** Omitted.

Savings.

2. Nothing contained in Part II shall be deemed to affect the powers of the High Court over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

Definitions.

3. In this Act unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum for lunatics established or licensed by Government :

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum :

(3) "District Court" means the principal Civil Court of original jurisdiction in any area :

(4) "criminal lunatic" means any person for whose [2][detention] in, or removal to an asylum, jail or other place

1. Short title, extent and commencement are given and regulated by Act IV of 1977.
2. Substituted for "confinement" by Act III of 1988.

of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, or of section 30 of the Prisoners Act.

(5) "lunatic" means an idiot or person of unsound mind :

(6) "Magistrate" means a District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the [1][the Government] to perform the functions of a Magistrate under this Act :

(7) "medical officer" means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of [1][the Government] to be a medical officer for the purposes of this Act :

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of [1][the Government] to be a medical practitioner for the purposes of this Act :

(9) "prescribed" means prescribed by this Act or by rule made thereunder :

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition :

(11) "relative" includes any person related by blood, marriage or adoption : and

(12) "rule" means a rule made under this Act.

PART II.

RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II.

RECEPTION OF LUNATICS.

Reception of persons in asylum.

4. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8 and 16 :

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which

1. In sections 3(6), (7), (8), 5(4), 28, 30(2), 35, 84, 91 and 95 the words "The Government" substituted for "His Highness" *vide* Act X of 1996.

consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Receeption orders on petition.

Application for reception order.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court ; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area unless [1][the Government] has, by notification in the Government Gazette, declared such area as an area in which reception orders may be made.

Application by whom to be presented.

6. [2][(1) Subject to the provisions of sub-section (3), the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from the State or otherwise from making the presentation, by the nearest relative of the alleged lunatic, who is not so prevented.]

[2][(2) If the petition is not presented by the husband or wife or, where there is no husband or wife, by the nearest relative, of the alleged lunatic, the petition] shall contain a statement

1. See footnote under section 3.
2. Section 6 sub-section (1) substituted and words within brackets in sub-section (2) substituted for certain words, by Act III of 1988.

of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, presonally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

Procedure upon petition for reception order.

7. (I) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

Detention of alleged lunatic pending inquiry.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

Consideration of petition.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs,) any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

Order.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it

was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

Further provisions as to reception orders on petition.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

(*a*) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(*b*) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

Power to appoint substitute for the person upon whose application a reception order has been made.

[1][**11-A.** (1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person, who is willing to undertake the same, and such other person shall thereupon be deemed, for the purposes of this Act to be the person, on whose petition the reception order was made, and all references in this Act to such last mentioned person shall be construed accordingly :

Provided that no such order of substitution shall release the person, upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given, the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive

1. Section 11-A added by Act III of 1988.

all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution:

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate fitted to undertake the duties and responsibilities under this Act of such first mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.]

Reception orders otherwise than on petition.

12. Omitted.

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

13. (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

Reception order in case of wandering and dangerous lunatics.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit ; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum :

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement :

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

Order in case of lunatic cruelly treated or not under proper care and control.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he

may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

Detention of alleged lunatic pending report by medical officer.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. Omitted.

Further provisions as to reception orders and medical certificates.

Medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a qualified medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others ; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

Time and manner of medical examination of lunatics.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required each person who signs a certificate has personally examined, the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

Authority for reception.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order :

'[Provided that no reception order shall continue to have effect —

(*a*) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(*b*) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

Copy of reception order to be sent to person in charge of asylum.

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

22. Omitted.

1 Proviso to section 20 added by Act III of 1988.

Detention of lunatics pending removal to asylum.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14, or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics.

Reception and detention of criminal lunatic.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, or under section 30 of the Prisoners Act, 1977 directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception after inquisition.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—

(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court ;

(2) in the case of an inquisition under Chapter V, on an order made by the District Court ;

Order for payment of cost of maintenance of lunatic.

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such

cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

Amendment of order or certificate.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

28. (1) [1][The Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

Appointment of visitors.

(2) Minister-in-charge of Prisons shall be a visitor *ex-officio* of all the asylums within the State.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Monthly inspection by visitor.

30. (1) When any person is [2][detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, the Minister-in-charge of Prisons, if such person is

Inspection of criminal lunatic by Minister or visitors.

1. See footnote under section 3.
2. Substituted *vide* Act III of 1988 for "confined".

[1][detained] in a jail or the visitors of the asylum or any two of them, if he is [1][detained] in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Minister or by two of such visitors as aforesaid; and such Minister or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is [1][detainted].

(2) [2][The Government] may empower the officer-in-charge of the Jail in which such person may be [1][detained] to discharge all or any of the functions of the Minister under sub-section (1).

Discharge of lunatics.

Order of discharge from asylum by visitors.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged:

Provided that no order under this sub-section shall be made in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1977.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

Discharge of lunatics in other cases.

32. A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum:

Provided that no lunatic shall be discharged if the officer-in-charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

Order of discharge on undertaking of relative for due care of the lunatic.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14 or 15 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without

1. Substituted for 'confined' by Act III of 1988.
2. See footnote under section 3.

sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

Discharge of person subsequently found on inquisition not to be of unsound mind.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14 or 15 is subsequently found on an inquisition under Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Removal of lunatics.

Removal of lunatics and criminal lunatics.

35. (1) Any lunatic may be removed from any asylum established by Government, to any other asylum within the State in accordance with any general or special order of [1][the Government]:

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) [1][The Government] may make such general or special order as it thinks fit directing the removal of any person for whose [2][detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, from the place where he is for the time being [2][detained], to any asylum, jail or other place of safe custody in the State.

Escape and re-capture.

Order to justify detention and re-capture after escape.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order, be re-taken by any police officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person

1. See footnote under section 3.
2. Substituted for "confinement" and "confined" by Act III of 1938

authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic the power to re-take such escaped lunatic under this section shall be exerciseable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

37 to **61**. Omitted.

CHAPTER V.

PROCEEDINGS IN LUNACY.

Inquisition.

62. Whenever any person is possessed of property and is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

Power of District Court to institute inquisition as to persons alleged to be lunatic.

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1977 (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

Application by whom to be made.

(2) If the property or any part thereof is of such a description that it would by the law in force in the State subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

64. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

Regulation of proceedings of District Courts.

If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

(2) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

(3) The attendance and examination of the alleged lunatic under the provisions of sub-section (2) shall, if the alleged lunatic be a woman who, according to the manners and customs of the country ought not to be compelled to appear in the public, be regulated by the law and practice for the examination of such persons in other Civil cases.

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

Inquisition by District Courts and finding thereon.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

(2) On the completion of the inquisition the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors, have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65 sub-section (2) :

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the same.

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the [1][Government] or of such authority as he may appoint in this behalf.

Control over proceedings of Collector.

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person :

Power of District Court to appoint guardian and manager and take security from manager.

Provided that—(i) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof when realised, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(*ii*) If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under above proviso, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit engaging duly to account for what he may receive in respect of the property of the lunatic.

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

Restriction on appointment of legal heir of lunatic to be guardian of his person.

1. Substituted *vide* Act VII of 2001 for "His Highness".

Remuneration of managers and guardians.

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Duties of guardian.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

Powers of manager.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Provided that no manager so appointed shall without the permission of the Court—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic,

(*b*) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

Manager to furnish inventory and annual accounts.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immovable property belonging to the lunatic and of all such money, or other movable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the

property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Proceeding if accuarcy of inventory or accounts is impugned.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

Payment into public treasury and investment of proceeds of estate.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Trusts Act, 1977, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

Relative may use for an account.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formely under his care or management or of any sums of money or other property received by him on account of such estate.

Removal of managers and guardians.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the

person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

Penalty on manager for refusing to deliver accounts or property.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realise such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil Jail until he delivers such accounts or property.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

82. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Appeals.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART IV.

MISCELLANEOUS.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

Local Government may establish or licence the establishment of asylums.

84. [1][The Government] may establish or licence the establishment of asylums at such places as it thinks fit.

85. Omitted.

1. See footnote under section 3.

CHAPTER VII.

EXPENSES OF LUNATICS.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

86. When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

Application of property in the possession of a lunatic found wandering.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any movable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

88. If a lunatic detained in an asylum on a reception order made under section 14 or section 15 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

Order of Court and enforcement thereof.

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of property or person therein mentioned.

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

Saving of liability of relatives to maintain lunatic.

CHAPTER VIII.

RULES.

91. (1) [1][The Government] may make rules for all or any of the following purposes, namely :—

Power of the Government to make rules.

(*a*) to prescribe forms for any proceeding under this Act ;

(*b*) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16 ;

(*c*) to regulate the [2][detention), care, treatment and discharge of criminal lunatics ;

(*d*) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer form one asylum to another ;

(*e*) to regulate the transfer of criminal lunatics to asylums ;

(*f*) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government ;

(*g*) to prescribe the asylums established by Government within the province to which lunatics from any area or any class of lunatics shall be sent ;

(*h*) to prescribe conditions subject to which asylums may be licensed ;

(*i*) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, [1][the Government] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

92. All rules made under section 91 shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon have effect as if enacted in this Act.

Publication of rules.

1. See footnote under section 3.
2. Substituted for "confinement" by Act III of 1988.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

93. Any person who—

(*a*) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

Penalty for improper reception or detention of lunatic.

(*b*) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

94. The provisions of Chapter XLII of the Code of Criminal Procedure, shall, so far as may be, apply to bonds taken under this Act.

Provisions as to bonds.

95. (1) When any sum is payable in respect of pay, pension, gratuity or other similar allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for maintenance of such members of the lunatic's family as are dependent on him for maintenance.

Pension of lunatic payable by Government.

(2) [1][The Government] shall be discharged of all liability in respect of any amounts paid in accordance with this section.

96. Subject to any rules, the form set forth in the Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

Use of forms in Schedule.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under Act.

98. to **101.** Omitted.

———

1. See footnote under section 3.

SCHEDULE.

FORMS.

(*See section* 96.)

FORM I.

Application for Reception Order.

(*See sections* 5 *and* 6)

In the matter of A. B. (*i*), residing at , by occupation , son of ;
a person alleged to be a lunatic.

To

(District Magistrate of
or Sub-divisional Magistrate of
, or Magistrate specially empowered under the Lunacy Act).

The petition of C. D. (*i*), residing at , by occupation , son of , in the town of (*or* sub-division of in the district of).

1. I am (ii) years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic in the asylum of situate at (iii).

3. I last saw the said A. B. at on the (iv) day of

4. I am the (v) of the said A. B.

(*or if the petitioner is not a relative of the patient state as follows*).

I am not a relative of the said A. B. The reasons why this petition is not presented by a relative are as follows : (*State them*).

The circumstances under which this petition is presented by me are as follows : (*State them.*)

(i) Full name, caste and titles.

(ii) Enter the number of completed years. The petitioner must be at least eighteen or twenty-one whichever is the age of majority under ths law to which the petitioner is subject.

(iii) Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum.

(iv) A day within 14 days before the date of presentation of the petition is requisite.

(v) Here state the relationship with the patient.

5. The persons signing the medical certificates which accompany the petition are (i).

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. (*If that is the fact.*) An application for an inquiry into the mental capacity of the said A B. was made to the on the and a certified copy of the order made on the said petition is annexed hereto. (*Or if that is the fact.*)

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs are true to my knowledge ; the other statements are true to my informotion and belief.

(Sd.) C. D.

Dated

Statement of particulars,

(*If any of the particutars in this statement is not known, the fact to be so stated.*)

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic. Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

(The statements contained or referred to in paras are true to my knowledge. The other statements are true to my information and belief.)

Signature by person making the statement.

(i) Here state whether either of the persons signing the medical certificates a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

FORM 2.

Reception Order on Petition.

(*See sections 7, 10.*)

I, the undersigned E. F., being the District Magistrate of or the Sub-divisional Magistrate of or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under the Lunacy Act upon the petition of C. D. of (*a*) in the matter of A. B., (*a*) a lunatic. accompanied by the medical certificate of G. H., a medical officer, and of J. K., a medical practitioner (*or* medical officer), under the said Act hereto annexed, hereby authorise you to receive the said A. B. into your asylum. And I declare that I have (*or* have not) personally seen the said A. B: before making this order.

(Sd.) E. F.

To (*b*)

(*Designation as above*),

FORM 3.

Medical Certificate.

(*See sections 18, 19.*)

In the matter of A. B. of (*i*) in the town of (or the sub-division of in the district of) an alleged lunatic.

I, the undersigned C. D., do hereby certify as follows:—

1. I am a gazetted medical officer (or a medical practitioner declared by Government[1] a holder of (*ii*) or declared by [the Government] to be a medical practitioner to be medical officer under the Lunacy Act under the Lunacy Act) and I am in the actual practice of the medical profession.

2. On the day of 19 at (*iii*) in the town of (or the village sub-division of in the district of) (separately from any other practitioner) (*iv*), I personally examined the said A. B. and came to the conclusion that the said A. B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, *viz*—

(*a*) Facts indicating insanity observed by myself, *viz*—

(*b*) Other facts (if any) indicating insanity communicated to me by others, *viz*—*Here state the information and from whom.*

(Sd.) C. D.

Designation as above.

FORM 4.

Omitted.

(*a*) Address and description.

(*b*) To be addressed to the officer or person in charge of the asylum.

(*i*) Insert residence of patient.

(*ii*) Insert qualification to practise medicine and surgery registerable in the United Kingdom.

(*iii*) Insert place of examination.

(*iv*) Omit this where only one certificate is required.

1. Substituted *vide* Act X of 2010 for "His Highness",

FORM 5.

***Reception Order** in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government.)*

(*See sections* 14, 15.)

I, C. D., the District Magistrate of *or* the sub-divisional Magistrate of *or* a Magistrate specially empowered by Government under the Lunacy Act having caused A. B. to be examined by E. F., a Medical Officer under the Lunacy Act, and being satisfied that A B. (*describing him*) is a lunatic who was wandering at large (*or* is a person dangerous by reason of lunacy) (or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him) and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

Designation as above.

Dated the

To the officer incharge of the asylum at

FORM 6.

Same when sent to a licensed asylum.

I. C. D., (*as above down to* "care and treatment") and being satisfied with the engagement entered into in writing by G. H. of (*here insert address and description*) who has desired that the said A. B. may be sent to the asylum at (*here insert description of asylum and name of the person in charge*) to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorise you to receive the said A. B. into your asylum.

(Sd.) C. D.

(*Designation as above*).

Dated the

To the person incharge of the asylum at

FORM 7.

Bond an the making over of a lunatic to the care of relative or friend.

(*See sections* 14, 15.)

Whereas A B., son of , inhabitant of , has been brought up before C. D., $\frac{\text{District}}{\text{Sub-divisional}}$ Magistrate of , or a Magistrate of the first class specially empowered under the Lunacy Act, and is a lunatic who is believed to be dangerous (or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him) and whereas I, E. F. son of inhabitant of have applied to the Magistrate that the said A. B. may be delivered to my care :

I, E. F., above named hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others : and in case of my making default therein, I hereby bind myself to forfeit to the Government the sum of rupees

Dated this day of 19 .

(Sd.) E. F.

(*Where a bond with sureties is to be executed add*)—We do hereby declare ourselves sureties for the above named E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in the case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to the Government, the sum of rupees .

Dated this day of 19 .

(*Signature.*)

FORM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(*See section* 33.)

Whereas A. B., son of , inhabitant of is a lunatic who is now detained in the asylum at under an order made by C. D., or the District / sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under the Lunacy Act under section 14 (or section 15) of the Lunacy Act and whereas I, E. F., son of , inhabitant of , have applied to the said Magistrate that the said A. B. may be delivered to my care and custody:

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others ; and in case of my making default therein I hereby bind myself to forfeit to the Government the sum of rupees

Dated this day of 19 .

(Sd.) E. F.

(*Where a bond with sureties is to be executed add*)—We do hereby declare ourselves sureties for the above named E. F. that he will, on the aforeasid A.B being delivered to his care and custody, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to the Government, the sum of rupees .

Dated this day of 19 .

(*Signature.*)

THE MAJORITY ACT, 1977 (1920 A. D.)

Act No. XXVI of 1977

CONTENTS.

Preamble.

SECTION.

1. Omitted.
2. Savings.
3. Age of majority of persons domiciled in State.
4. Age of majority how computed.

THE MAJORITY ACT, 1977 (1920 A. D.)

Act No. XXVI of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.* 14-*L*/81).]

An Act to amend the law respecting the age of majority.

WHEREAS in the case of persons domiciled in the State, it is expedient to prolong the period of non-age, and to attain more uniformity and certainty respecting the age of majority than now exists ; It is hereby enacted as follows :—

Preamble.

[1]**1.** Omitted.

2. Nothing herein contained shall affect—

Savings.

(*a*) the capacity of any person to act in the following matters (namely),—marriage, dower, divorce, and adoption ;

(*b*) the religion or religious rites and usages of any class of the State subjects in the State ; or

(*c*) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.

1. **Short title, extent, and commencement are given and regulated by Act IV of 1977.**

Age of majority of persons domiciled in State.

3. Subject as aforesaid, every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of order XXXII of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in the State shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustration.

(a) Z is born in the State on the first day of Baisakh 1950, and has a State domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of Baisakh 1971.

(b) Omitted.

(c) Z is born on the first day of Baisakh 1950. He acquires a domicile in the State. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of Baisakh 1968.

The NEGOTIABLE INSTRUMENTS ACT, 977 (1920 A. D.)

Act No. XXVII of 1977.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Savings of usages relating to hundis, etc.
2. Omitted.
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4 "Promissory note".
5. "Bill of exchange".
6. "Cheque".
7. "Drawer".
"Drawee".
"Drawee in case of need",
"Acceptor".
"Acceptor for honour".
"Payee".
8. "Holder".
9. "Holder in due course".
10. "Payment in due course".
11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument".
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full". "Indorsee".
17. Ambiguous instruments.
18. Where amount is stated differently in figures and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight".
"On presentment".
"After sight".
22. "Maturity".
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, etc., promissory notes, etc. Minor.

SECTION.

27. Agency,

28. Liability of agent signing.

29. Liability of legal representative signing.

30. Liability of drawer.

31. Liability of drawee of cheque.

32. Liability of maker of note and acceptor of bill.

33. Only drawee can be acceptor except in need or for honour.

34. Acceptance by several drawees not partners.

35. Liability of indorser.

36. Liability of prior parties to holder in due course.

37. Maker, drawer and acceptor principals.

38. Piror party a principal in respect of each subsequent party.

39. Suretyship.

40. Discharge of indorser's liability.

41. Acceptor bound, although indorsement forged.

42. Acceptance of bill drawn in fictitious name.

43. Negotiable instrument made, etc., without consideration.

44. Partial absence or failure of money consideration.

45. Partial failure of consideration not consisting of money.

SECTION.

45A. holder's right to duplicate of last bill.

CHAPTER IV.

OF NEGOTIATION.

46. Delivery.

47. Negotiation by delivery.

48. Negotiation by indorsement.

49. Conversion of indorsement in blank into indorsement in full.

50. Effect of indorsement.

51. Who may negotiate.

52. Indorser who excludes his own liability or makes it conditional.

53. Holder deriving title from holder in due course.

54. Instrument indorsed in blank.

55. Conversion of indorsement in blank into indorsement in full.

56. Indorsement for part of sum due.

57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. Instrument obtained by unlawful means or for unlawful consideration.

59. Instrument acquired after dishonour or when overdue. Accommodation note or bill.

60 Instrument negotiable till payment or satisfaction.

SECTION.

CHAPTER V.

OF PRESENTMENT.

61. Presentment for acceptance.

62. Presentment of promissory note for sight.

63. Drawee's time for deliberation.

64. Presentment for payment.

65. Hours for presentment.

66. Presentment for payment of instrument payable after date or sight.

67. Presentment for payment of promissory note payable by instalments.

68. Presentment for payment of instrument payable at specified place and not elsewhere.

69. Instrument payable at specified place.

70. Presentment where no exclusive place specified.

71. Presentment when maker, etc., has no known place of business or residence.

72. Presentment of cheque to charge drawer.

73. Presentment of cheque to charge any other person.

74. Presentment of instrument payable on demand.

75. Presentment by or to agent, representative of deceased, or assignee of insolvent.

75 A. Excuse for delay in presentment for payment.

SECTION.

76. When presentment unnecessary.

77. Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. To whom payment should be made.

79. Interest when rate specified.

80. Interest when no rate specified.

81. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability—

(a) by cancellation ;

(b) by release ;

(c) by payment.

83. Discharge by allowing drawee more than forty-eight hours to accept.

84. When cheque not duly presented and drawer damaged thereby.

85. Cheque payable to order.

86. Parties not consenting discharged by qualified or limited acceptance.

87. Effect of material alteration.

SECTION.

Alteration by indorsee.

88. Acceptor or indorser bound notwithstanding previous alteration.

89. Payment of instrument on which alteration is not apparent.

90. Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR,

91. Dishonour by non-acceptance.

92. Dishonour by non-payment.

93. By and to whom notice should be given.

94. Mode in which notice may be given.

95. Party receiving must transmit notice of dishonour.

96. Agent for presentment,

97. When party to whom notice given is dead.

98. When notice of dishonour is unnecessary.

CHAPTER IX

OF NOTING AND PROTEST.

99. Noting.

100. Protest.

Protest for better security.

101. Contents of protest.

SECTION.

102. Notice of protest.

103. Protest for non-payment after dishonour by non-acceptance.

104 Protest of foreign bills.

104-A. When noting equivalent to protest.

CHAPTER X.

OF REASONABLE TIME.

105. Reasonable time.

106. Reasonable time of given notice of dishonour.

107. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. Acceptance for honour.

109. How acceptance for houour must be made.

110. Acceptance not specifying for whose honour it is made.

111. Liability of aceceptor for honour.

112. When acceptor for honour may be charged.

113. Payment for honour.

114. Right of payer for honour.

115. Drawee in case of need.

116. Acceptance and payment without protest.

SECTION.

CHAPTER XII.

OF COMPENSATION.

117. Rules as to compensation.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments—
(a) of consideration;
(b) as to date;
(c) as to time of acceptance;
(d) as to time of transfer;
(e) as to order of indorsements;
(f) as to stamp;
(g) that holder is a holder in due course.

119. Presumption on proof of protest.

120. Estoppel against denying original validity of instrument.

121. Estoppel against denying capacity of payee to indorse.

122. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Cheque crossed generally.

124. Cheque crossed specially.

125. Crossing after issue.

126. Payment of cheque crossed generally.

Payment of cheque crossed specially.

SECTION.

127. Payment of cheque crossed specially more than once.

128. Payment in due course of crossed cheque.

129. Payment of crossed cheque out of due course.

130. Cheque bearing "Not negotiable."

131. Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Set of bills.

133. Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.

135. Law of place of payment governs dishonour.

136. Instrument made, etc., out of the State, but in accordance with its law.

137. Presumption as to foreign Law.

CHAPTER XVII.

NOTARIES PUBLIC.

138. Power to appoint notaries public.

139. Power to make rules for notaries public.

THE NEGOTIABLE INSTRUMENTS ACT, 1977 (1920 A. D.)

Act No. XXVII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.*14-*L*/81)].

An Act to define and amend the Law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows[1]:—

CHAPTER I.

PRELIMINARY.

Savings of usages relating to hundis, etc.

1. Nothing herein contained affects any local usage relating to any instrument in an oriental language: provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act.

2. Omitted.

Interpretation-clause.

3. In this Act—

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary public" includes also any person appointed by [2][the Government] to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

"Promissory note".

4. A "Promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, sign-

1. Short title, extent and commencement are given and regulated by Act IV of 1977

2. In sections 3, 25, 138 and 139 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.

ed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms :

(*a*) "I promise to pay B or order Rs. 500".

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received".

(*c*) "Mr B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him".

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me".

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C"

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enongh to pay that sum".

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on Ist January next".

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

"Bill of Exchange".

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker directing a certain person to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section 4, although he is mis-named or designated by description only. A bill of exchange may include a Hundi.

"Cheque"

6. A "cheque" is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called "the drawee."

"Drawer". "Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

"Drawee in case of need"

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor."

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

"Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque, if payable to bearer,

"Holder in due course."

or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Payment in due course."

11. A promissory note, bill of exchange, or cheque, drawn or made in the State and made payable in, or drawn upon any person resident in, the State, shall be deemed to be an inland instrument.

Inland instrument.

12. Any such instrument not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

Foreign instrument.

13. (1) A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Negotiable instrument.

EXPLANATION (i)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

EXPLANATION (ii)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

EXPLANATION (iii)—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

15. When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser".

Indorsement.

16. (1) If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in

Indorsement "in blank" and "in full."

full"; and the person so specified is called the "indorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

Ambiguous instruments.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in the State, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight."
"On presentment"
"After sight"

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payble on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calcuating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight, or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

EXPLANATION.— The expression 'public holiday" includes Sundays : New Year's day, Christmas day : if either of such days falls on a Sunday, the next following Monday : Good Fri-

day ; and any other day declared by [1][the Government], by notification in the Jammu and Kashmir Government Gazette, to be a public holiday for the purposes of this Act.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, etc., promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

1. See footnote under section 3.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, and received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor, are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties, so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D. and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Contract Act, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Discharge of indorser's liability.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B,"

Second indorsement, "Peter Williams."

Third indorsement , "Wright and Co,"
Fourth Indorsement, "John Rozario".

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

Acceptor bound, although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawers signature, and purporting to be made by the drawer.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But, if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any piror party thereto.

EXCEPTION I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he had paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

EXCEPTION II.—No party to the instrument, who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque, consisted of money, and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation

with such signer is entitled to receive from him is proportionally reduced.

EXPLANATION.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchage or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill.

45-A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

———

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque, is completed by delivery, actual or constructive.

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer, is negotiable by delivery thereof.

EXCEPTION.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possess the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full ; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation ; but the indorsement may, by express words

restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer :—

(*a*) "Pay the contents to C only".

(*b*) "Pay C for my use".

(*c*) "Pay C or order for the account of B".

(*d*) "The within must be credited to C".

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C".

(*f*) 'Pay C value in account with the Oriental Bank".

(*g*) 'Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others".

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

EXPLANATION.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof ; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument, who derives title from a holder in due course, has the rights thereon of that holder in due course.

Instrument indorsed in blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even althougn originaly payable to order.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot, by delivery only negotiate instrument insdorsed by deceased.

57. The legal representative of a deceased person cannot negotiate, by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased, but not delivered.

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transfer or:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presement for acceptance.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorised by agreement or usage, a presentment

through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee [1][forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

EXCEPTION.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

1. Substituted for "twenty-four" *vide* Act XIV of 1988.

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place, specified.

70. A promissory note or bill of extchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc,, has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

72. Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representa-

tive, or, where he has been declared an insolvent, to his assignee.

Excuse for delay in presentment for payment.

[75-A. Delay in presentment for payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

1. Section 75-A added *vide* Act XIV of 1988.

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

78. Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realisation of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, [1][notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

EXPLANATION.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument in payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

---

1. Added *vide* Act XIV of 1988.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY OF NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of negotiable instrument is discharged from liability thereon—

Discharge from liability.

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by cancellation;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by release;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

by payment.

83. If the holder of a bill of exchange allows the drawee more than [1][forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Discharge by allowing drawee more than forty-eight hours to accept.

84. (*1*) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

When cheque not duly presented and drawer damaged thereby.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

1. Substituted for "twenty-four" *vide* Act XIV of 1988.

Illustrations.

(*a*) A draws a cheque for Rs, 1.000, and, when the cheque ought to be presented, has funds at the bank to meet it, The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

EXPLANATION.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid ;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

and any such alteration, if made by an indorsee discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument on which aleration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91 A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Dishonour by non-payment.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some

By and to whom notice should be given.

party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissiory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee ; may be oral or written ; may, if written, be sent by post ; and may be in any form ; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon ; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto ;

(*b*) in order to charge the drawer when he has countermanded payment ;

(*c*) when the party charged could not suffer damage for want of notice ;

(*d*) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;

(*e*) to charge the drawers when the acceptor is also a drawer ;

(*f*) in the case of a promissory note which is not negotiable ;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

———

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto. or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts

to be noted and certified as aforeasid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section 100 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;

(*b*) the name of the person for whom and against whom the instrument has been protested ;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found ;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(*e*) the subscription of the notary public making the protest ;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.

Notice of protest.

102 When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

104-A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

When noting equivalent to protest

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instrument; and, in calculating such time, public holidays shall be excluded.

Reasonable time.

106 If the holder and the party to whom notice of dishonour is given carry on buisness or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time of giving notice of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

How acceptance for honour must be made.

109. A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

Acceptance not specifing for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not ; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Right of payer for honour.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Drawee in case of need.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall be determined by the following rules :—

Rules as to compensation.

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment ;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in

the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Until the contrary is proved, the following presumptions shall be made:—

Presumptions as to negotiable instruments—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

of consideration ;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date ;

as to date ;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of acceptance ;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to time of transfer ;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to order of indorsement;

(*f*) that a last promissory note, bill of exchange or cheque was duly stamped;

as to stamp;

(*g*) that the holder of a negotiable instrument is a holder in due course : Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Presumption on proof of protest.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon

Estoppel against denying original validity of instrument.

by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder my cross it generally or specially.

Where cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable".

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

[1][EXPLANATION.— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customers account with the amount of the cheque before receiving payment thereof.]

1. Explanation to section 131 added *vide* Act XIV of 1988.

CHAPTER XV.

OF BILLS IN SETS.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

EXCEPTION.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to all.

133. As between holders in due course of differant parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorsers by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in the State, and is dishonoured. An action on the bill is brought against B in the State. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in the State, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of [1][the State], but in accordance with the law of the State, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in the State.

Instrument made, etc, out of the State, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of the State, unless and until the contrary is proved.

Presumption as to foreign law

CHAPTER XVII.

NOTARIES PUBLIC.

138. [2][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to appoint notaries public.

139. [2][The Government] may, from time, to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with his Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

Power to make rules for notaries public.

---

1 Substituted *vide* A. L. O. 2008 for "British India",

2. See footnote under section 3.

THE PUBLIC SERVANTS (INQUIRIES) ACT 1977 (1920 A. D.)

Act No. XXVIII of 1977.

CONTENTS.

Preamble.

SECTION.

1. Omitted.
2. Articles of charge to be drawn out for public inquiry into conduct of certain public servants.
3. Authorities to whom inquiry may be committed. Notice to accused.
4. Conduct of Government prosecution.
5. Charge by accuser to be written and verified. Penalty for false accusation. Institution of inquiry by Government.
6. Security from accuser left by Government to prosecute.
7. Power of Government to abondon prosecution and to allow accuser to continue it.
8. Powers of commissioners. Their protection. Service of their process. Powers of court, etc., acting under commission.
9. Penalty for disobedience to process.
10. Copy of charge and list to be furnished to accused.
11. Procedure at beginning of inquiry. Non-appearance of accused and admission of charge.
12. Prosecutor's right of address.
13. Evidence for prosecution and examination of witnesses. Re-examination by prosecutor.
14. Power to admit or call for new evidence for prosecution. Accused's right to adjournment.
15. Defence of accused. To be recorded only when written.
16. Evidence for defence and examination of witnesses.
17. Omitted.
18. Notes of oral evidence.
19. Inquiry when closed with defence. Prosecutor when entitled to reply and give evidence. Accused not entitled to adjournment.
20. Power to require amendment of charge and to adjourn. Reasons for refusing adjournment to be recorded.
21. Report of commissioners' proceedings.
22. Power to call for further evidence or explanation. Inquiry into additional articles of charge. Reference of report of Special Commissioner's. Final orders.
23. Powers of Government under this Act by whom exerciseable.
24. Authority of Government not affected.
25. Omitted.

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1977 (1920 A. D).

ACT No. XXVIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September* 1920 *and State Council Resolution No. I, dated* 8*th April*, 1925, (*Notification No.* 14-*L*/81).]

For regulating inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the [1][sanction of the Government or any of the Ministers,] and to make the same uniform throughout [2][the territories of the State]; It is enacted as follows :—

[3]**1.** Omitted.

Articles of charge to be drawn out for public inquiry into conduct of certain public servants.

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of mis-behaviour by any person in the service of the Government not removable from his appointment without the sanction of [4][the Government or any of the Ministers,] it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

Authorities to whom inquiry may be committed. Notice to accused.

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

Conduct of Government prosecution.

4. When the Govenment shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

1. Substituted *vide* Act X of 2010 for "sanction of His Highness or any of his Ministers."
2. Substituted *vide* Act X of 2010 for "the territories under His Highness."
3. Short title, extent and commencement are given and regulated by Act IV of 1977.
4. Substituted *vide* Act X of 2010 for "His Highness or any of his Ministers".

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Charge by accuser to be written and verified.

Penalty for false accusation.

Institution of inquiry by Government.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any countercharge or action which may be afterwards brought against him for malicious prosecution or perjury or subordination of perjury, as the case may be.

Security from accuser left by Government to prosecute.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

Power of Government to abandon prosecution and to allow accuser to continue it.

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Criminal Procedure, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the District and subordinate Judges, except that all process to cause the attendance of witnesses or other compulsory, process shall be served through and executed by the District or Subordinate Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served. When the commission has been issued to a Court,

Powers of commissioners.

Their protection.

Service of their process.

Powers of Court, etc., acting under commission.

or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Penalty for disobedience to process.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

Copy of charge and list to be furnished to accused.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall de delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

Procedure at beginning of inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead guilty" or not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

Non-appearance of accused and admission of charge.

Prosecutor's right of address.

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved : his address shall not be recorded.

Evidence for prosecution and examination of witnesses.

13. The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners who also may put such questions as they think fit.

Re-examination by prosecutor.

Power to admit or call for new evidence for prosecution.

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he

Accused's right to adjournment.

demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Defence of accused.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made

To be recorded only when written.

in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Evidence for defence, and examination of witnesses.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

17. Omitted.

Notes of oral evidence.

18. The commissioners or some person appointed by them shall take notes in English or Vernacular of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Inquiry when closed with defence.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be

Prosecutor when entitled to reply and give evidence.

entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled

Accused not entitled to adjournment.

to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Power to require amendment of charge and to adjourn.

20. When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

Reasons for refusing adjournment to be recorded.

Report of commissioners' proceedings.

21, After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Power to call for further evidence or explanation.

22. The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions, It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it think fit, refer the report of the Commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case ; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Inquiry into additional articles of charge.

Reference of report of Special Commissioners.

Final orders.

Powers of Government under this Act by whom exerciseable.

23. The powers of the Government under this Act may in all cases be exercised by [1][the Council of Ministers], and when the person accused can be removed from his appointment by a Minister in the State, those powers may also be exercised by that Minister.

1. Substituted *vide* Act X of 2010 for "His Highness".

[1][24. Nothing in this Act shall be construed to affect the authority of Government for suspending or removing any public servant for any case without any inquiry under this Act.

Authority of Government not effected.

25. Omitted.

THE PROBATE & ADMINISTRATION ACT, 1977 (1920 A. D.)

Act No. XXIX Of 1977.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Omitted.
2. Application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment, express or implied.
8. Persons to whom probate cannot be granted.

SECTION.

9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16 Grant of administration where executor has not renounced. Exception.
17. Form and effect of renunciation of executorship.

1. Section 24 substituted *vide* Act X of 1996.

SECTION.

18. Procedure where executor renounces or fails to accept within time limited.

19. Grant of administration to universal or residuary legatee.

20. Right to administration of representative of deceased residuary legatee.

21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Citation before grant of administration to legatee other than universal or residuary.

23. To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limted in Duration.*

24. Probate of copy or draft of lost will.

25. Probate of contents of lost or destroyed will.

26. Probate of copy where original exists.

27. Administration until will produced.

(*b*).—*Grants for the Use and Benefit of Others having Right.*

28. Administration with will annexed to attorney of absent executor.

29. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.

SECTION.

30. Administration to attorney of absent person entitled to administer, in case of intestacy.

31. Administration during minority of sole executor or residuary legatee.

32. Administration during minority of several executors or residuary legatees.

33. Administration for use and benefit of lunatic.

34. Administration *pendent lite.*

(*c*).—*For Special Purposes.*

35. Probate limited to purpose specified in will.

36. Administration with will annexed limited to particular purpose.

37. Administration limited to trust property.

38. Administration limited to suit.

39. Administration limited to purpose of becoming party to suit to be brought against executor or administrator

40. Administration limited to collecticn and preservation of deceased's property.

41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*

42. Probate or administration with will annexed subject to exception.

SECTION.

43. Administration with exception.

(e). *Grants of the Rest.*

44. Probate or administration of rest.

(f) *Grants of Effects unadministered.*

45. Grant of effects unadministered.

46. Rules as to grants of effects unadministered.

47. Administration when limited grant expired and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. What errors may be rectified by Court.

49. Procedure where codicil discovered after grant of administration with will annexed.

50. Revocation or annulment for just cause.

"Just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, etc.

52. Power to appoint Delegate of District Judge to deal with non-contentious cases.

53. District Judge's powers as to grant of probate and administration.

54. District Judge may order person to produce testamentary papers.

55. Proceedings of District Judges, Court in relation to probate and administration.

SECTION.

56. When probate or administration may be granted by District Judge.

57. Disposal of application made to Judge of District in which deceased had no fixed abode.

58. Probate and letters of administration may be granted by Delegate.

59. Conclusiveness of probate or letters of administration.

Effect of unlimited probates, etc., granted by certain Courts.

60. Transmission to Hight Courts of certificate of grants under proviso to section 59.

61. Conclusiveness of application for pobate or administration, if properly made and verified,

62 Petition for probate.

63. In what cases translation of will to be annexed to petition.

Verification of translation by person other than Court translator.

64. Petition for letters of administration.

65. Additional statements in petition for probate, etc.

66. Petition for probate or administration to be signed and verified.

67. Verification of petition for probate by one witness to will.

68. Punishment for false averment in petition or declaration.

69. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.

Publication of citation.

SECTION.

70. Caveats against grant of probate or administration.

71. Form of caveat.

72. After entry of caveat, no proceeding taken on petition until after notice to caveator.

73. District Delegate when not to grant probate or administration.

74. Power to transmit statement to District Judge in doubtful cases where no contention.

75. Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

76. Grant of probate to be under seal of Court.

Form of such grant.

77. Grant of letters of administration to be under seal of Court. Form of such grant.

78. Administration-bond.

79. Assignment of administration-bond.

80. Time before which probate or administratian shall not be granted.

81. Filing of original wills of which probate or administration with will annexed granted.

82. Grantee of probate or administration alone to sue, etc., until same revoked.

83. Procedure in contentious cases.

SECTION.

84. Payment to executor or administrator before probate or administration revoked.

Right of such executor or administrator to recoup himself.

85. Power to refuse letters of administration.

86. Appeals from orders of District Judge.

87. Concurrent jurisdicition of High Court.

87-A. Removal of executor or administrator and provision for sucessor.

87-B. Directions to executor or administrator.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. In respect of causes of action surviving deceased, and debts due at death.

89. Demands and rights of suit of or against deceased survive to and against executor or administrator.

90. Power of executor or administrator to dispose of property.

90-A. General powers of administration.

91. Purchase by executor or administrator of deceased's property.

SECTION.

92. Powers of several executors or administrators exercise-able by one.

93. Survival of powers on death of one of several executors or administrators.

94. Powers of administrator of effects unadministered.

95. Powers of administrator during minority.

96. Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. As to deceased's funeral ceremonies.

98. Inventory and account.

99. Inventory to include property in any part of the State.

100. As to property of, and debts owing to, deceased.

101. Expenses to be paid before all debts.

102. Expenses to be paid next after such expenses.

103. Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, all debts to be paid equally and rateably.

105. Debts to be paid before legacies.

SECTION.

106. Executor or administrator not bound to pay legacies without indemnity.

107. Abatement of general legacies.

Executor not to pay one legatee in preference to another.

108. Non-abatement of specific legacy when assets sufficient to pay debts.

109. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. Rateable abatement of specific legacies.

111. Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. Assent necessary to complete legatee's title.

113. Effect of executor's assent to specific legacy.

Nature of assent.

114. Conditional assent.

115. Assent of executor to his own legacy.

Implied assent.

116. Effect of executor's assent.

117. Executor when to deliver legacies.

SECTION.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Commencement of annuity when no ttme fixed by will.

119. When annuity, to be paid quarterly or monthly, first falls due.

120. Date of successive payments when first payment directed to be made within given time, or on day certain.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Investment of sum bequeathed where legacy, not specific, given for life.

122. Investment of general legacy, to be paid at future time.

Intermediate interest.

123. Procedure when no fund charged with, or appropriated to, annuity.

124. Transfer to residuary legatee of contingent bequest.

125. Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Time and manner of conversion and investment.

SECTION.

Interest payable until investment.

127. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. Legatee's title to produce of specific legacy.

129. Residuary legatee's title to produce of residuary fund.

130. Interest when no time fixed for payment of general legacy.

131. Interest when time fixed.

132. Rate of interest.

133. No interest on arrears of annuity within first year after testor's death.

134. Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. Refund of legacy paid under Judge's orders.

136. No refund if paid voluntarily.

137. Refund when legacy becomes due on performance of condition within further time allowed.

SECTION.

138. When each legatee compelable to refund in proportion.

139. Distribution of assets.

Creditor may follow assests.

140. Creditor may call upon legatee to refund.

141. When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. When unsatisfied legatee must first proceed against executor, if solvent.

143. Limit to refunding of one legatee to another.

144. Refunding to be without interest.

145. Residue after usual ayments to be paid to P siduary re legatee.

145-A. Transfer of assets from the State to executor or administrator in country of domicile for distribution.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. Liability of executor or administrator for devastation.

SECTION.

147. Liability for neglect to get in any part of property.

CHAPTER XIV.

MISCELLANEOUS.

148. Provisions applied to administrator with will annexed.

149. Saving-clause.

150. Probate and administration, in case of Hindu, Mohammedan or Buddhist, to be granted only under this Act

151. Omitted.

152. Omitted.

153. Omitted.

154. Omitted.

155. Omitted.

156. Omitted.

157. Surrender of revoked probate or letters of administration.

THE PROBATE AND ADMINISTRATION ACT, 1977 (1920 A. D.)

Act No. XXIX of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September* 1920, *and State Council Resolution No. I dated* 8*th April*, 1925, (*Notification No.* 14-*L*/81).]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

[1]**1.** Omitted.

Application.

2. This Act shall apply in the case of [2][every person] dying before, on or after the date of commencement of this Act :

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that date.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Province".

"Province" means the province of Jammu or the province of Kashmir.

"Minor".

"Minor" means any person subject to the Majority Act, 1977, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years ; and

"minority".

"minority" means the status of any such person :

"will"

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

1. Short title, extent and commencement are given and regulated by Act IV of 1977.
2. Substituted *vide* Act XVI of 1998 for "every Hindu, Mohammedan and Budhist."

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :

"codicil".

"specific legacy" means a legacy of specified property :

"specific legacy".

"demonstrative legacy" means a legacy directed to be paid out of specified property :

"demonstrative legacy."

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"probate.

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"executor".

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

"admintstrator".

and

"District Judge" means the Judge of a principal civil Court of original jurisdiction.

"District Judge".

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Appointment express or implied.

Illustrations.

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix". C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates". The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Persons to whom probate cannot be granted.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discoverd after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminuation or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship ;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator' death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(*b*).—*Grants for the Use and Benefit of others having Right.*

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Adminsitration *pendente-lite*.

34. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an adminis-

trator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(*c*).—*For Special Purposes.*

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwillisg to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which

the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceaseds' property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(*e*).—*Grants of the Rest.*

Probate or administration of rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(*f*).—*Grants of Effects unadministered.*

Grant of effects unadministerated.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministerated.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

EXPLANATION.—"Just cause" is—

"Just cause".

1*st*, that the proceedings to obtain the grant were defective in substance ;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4*th*, that the grant has become useless and inoperative through circumstances ;

5*th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, etc.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District-judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, such appointment be made with the previous sanction of [1][the Government].

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration,

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the [2]Ranbir Dand Bidhi, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit,

1. Substituted for "His Highness" *vide* Act X of 1996.
2. Ranbir Penal Code.

and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if if appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, movable or immovable, of the deceased throughout the Province in which the same is or are granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted—

Effect of unlimited probates, etc., granted by certain Courts.

(*a*) by the High Court, or

(*b*) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the province does not exceed six thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of the State.

60. (1) Where probate or letters of administration has or have been granted by the District Judge with the effect referred to in the proviso to section 59, the District Judge shall send a certificate thereof to the High Court.

Transmission to High Court of crtificates of grants under proviso to section 59.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely—

"I, A. B., District Judge of.....hereby certify that on the.....day of.....granted probate of the will (or letters of administration of the estate) of C. D. late of.....deceased, to E. F. of.....and G. H. of.....and that such probate (or letters) has (or have) effect over all the property of the deceased throughout the whole of the State ;

and such certficate shall be filed by the High Court.

Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred in sub-section (1) shall send a copy thereof to such District Judge and such copy shall be filed by the District Judge receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall

Conclusiveness of application for probate or administration, if properly made and verified.

be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioners hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges, within whose jurisdiction such assets are situate.

In what cases translation of will to be annexed to petition,

Verification of translation by person other than Court translator.

63. In cases wherein the will, copy or draft is written in any language other than that in ordinary use in proceedings before the Court there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

"I (A. B.), do declare that I read and perfectly understand

the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the astets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

Additional statements in petition for probate, etc.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout the State, shall state in his petition, in addition to the matters respectivley required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the follow-

ing manner or to the like effect :—

" I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following: —

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence.)"

Punishment for false averment to petition or declaration,

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district, and otherwise publishted or made known in such manner as the Judge or Delegate issuing the same may direct.

Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the

same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect :—

"Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at , without notice to *C. D.* of ."

After entry of caveat no preceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

EXPLANATION.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, or any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administratiion should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge ;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do ; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following: —

Form of such grant.

"I, ,Judge of the district of ,[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from

time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of , 19 "

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following :—

Grant of letters of administration to be under seal of Court.

"I, ,Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

Form of such grant.

The day of ,19 ."

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted shall give a bond to the Judge of the District Court, to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

Assignment of administration-bond.

and upon such terms as to security, or providing that the

money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him ;

and [1][the Government] shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

1. Substituted for "His Highness" *vide* Act X of 1996.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Payment to executor or administrator before probate or administration revoked,

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoupe himself.

85. Notwithstanding anything hereinbefore contained, it shall, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Powers to refuse letters of administration.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Appeals from orders of District Judge.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of High Court.

87-A. The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator, and provide for the succession of another person to the office of any such executor or administrator who may ceasee to hold office, and the vesting in such successor of any property belonging to the estate.

Removal of executor or administrator and provision for successor.

87-B. Where probate or letters of administration in respect of any estate have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Directions to executor or administrator.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the [1]Ranbir Dand Bidhi, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(2) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under section 4, or

1. Ranbir Penal Code.

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall be absence of such an endorsment or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

General powers of administration.

90-A An executor or administrator may in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure —

(*a*) on such acts as may be necessary for the proper care and management of any property belonging to any estate administered by him, and

(*b*) with the sanction of the High Court, on such religious charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased,

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, movable or immovable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

94. The administrator of effects unadministered has, with repect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral ceremonies.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

98. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters

may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under [1]section 136 of the Ranbir Dand Bidhi.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under [2]section 146 of that Code.

99. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of the State, the executor or administrator shall include in the inventory of the effects of the deceased all his movable or immovable property situate in the State;

Inventory to include property in any part of the State.

and the value of such property situate in each Province shall be separately stated in such inventory;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within the State.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including

Expenses to be paid before all debts.

1. Sections 176 and 177 of the Ranbir Penal Code.
2. Section 193 of the Ranbir Penal Code.

fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Executor not to pay one legatee in preference to another.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy. When assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, and abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 332-5-4 are to be paid to B, and Rs. 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as genral for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatees' title.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of excutor's assent to specific legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific lagacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpnr, which at the date of the will and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid,

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes thc rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustartion.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

When annuity, to be paid quarterly or monthly, first falls due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Date of successive payments when first payment directed to be made within given time, or on day certain.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made;

Apportionment where annuitant dies between times of payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LAGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, an annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct.

Transfer to residuary legatee of contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the lagatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administartion with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards;

and, it the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account :

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

EXCEPTION.—A specific bequest, contigent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) Tne testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, bu. the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

EXCEPTION.—A general residuary bequest contingenet in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator. and the vesting of the legacy. Such income goes as undisposd of

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

EXCEPTIONS.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

EXCEPTION.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

Distribution of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Creditor may call upon legatee to refund.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate has been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from the State to executor or administrator in country of domicile for distribution.

145-A. Where a person not having his domicile in the State has died leaving assets both in the State and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in the State with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in the State, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of the State who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or adminstrator for devastation.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an un-founded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time, The executor is liable to make good the loss caused by the neglect.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

Liability for neglect to get in any part of property.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

149. Nothing herein contained shall—

(*a*) validate any testamentary disposition which would otherwise have been invalid ;

(*b*) invalidate any such disposition which would otherwise have been valid ;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled.

Probate and administration in case of Hindu or Mohammadan or Buddhist to be granted only under this Act.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammdan or Buddhist shall be instituteda in any Court in the State except under this Act.

151 to **156.** Omitted.

Surrender of revoked probate or letters of administration.

157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

THE PARTITION ACT, 1977 (1920 A. D.)

Act No. XXX of 1977.

CONTENTS.

Preamble.

SECTION.

1. Saving.
2. Power of Court to order sale instead of division in partition suits.
3. Procedure when sharer undertakes to buy.
4. Partition suit by transferee of share in dwelling house.
5. Representation of parties under disability.
6. Reserved bidding and bidding by share holders.
7. Procedure to be followed in case of sales.
8. Orders for sale to be deemed decrees.
9. Saving of power to order partly partition and partly sale.
10. Application of Act to pending suits.

THE PARTITION ACT, 1977 (1920 A. D.)

Act No. XXX of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1 *dated* 8*th April*, 1925, (*Notification No.* 14-*L*/81).]

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition ; It is hereby enacted as follows :—

Saving.

1. Nothing herein contained shall be deemed to affect any local law providing for the partition of immovable property paying revenue to Government.

Power of Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may thin*k* fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

1. Short title, extent and commencement are given and regulated by Act IV of 1977.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit by transferee of share in dwelling house.

4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (I) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Representation of parties under disability.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a share-holder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :—

Procedure to be followed in case of sales.

such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Orders for sale to be deemed decrees.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition or part of the property to which the suit relates and a sale of the remainder under this Act.

Saving of power to order partly partition and partly sale.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Application of Act to pending suits.

THE PRISONS ACT, 1977. (1920 A. D.)

Act No. XXXI of 1977.

CONTENTS.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Omitted.
2. Omitted.
3. Definitions.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. Accommodations for prisoners.
5. Inspector General.
6. Officers of prisons.

SECTION.

7. Temporary accommodation for prisoners.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

8. Control and duties of officers of prisons.
9. Officers not to have business dealings with prisoners.
10. Officers not to be interested in prison- contracts.

Superintendent.

11. Superintendent.

SECTION.

12. Records to be kept by Superintendent.

Medical Officer.

13. Duties of Medical Officer.
14. Medical Officer to report in certain cases.
15. Report on death of prisoner.
16. Jailor.
17. Jailor to give notice of death of prisoner.
18. Responsibility of Jailor.
19. Jailor to be present at night.
20. Powers of Deputy and Assistant Jailors.

Subordinate Officers.

21. Duties of gate-keeper.
22. Subordinate officers not to be absent without leave.
23. Convict Officers.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

24. Prisoners to be examined on admission.
25. Effects of prisoners.
26. Removal and discharge of prisoners.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. Separation of prisoners.

SECTION.

28. Association and segregation of prisoners.
29. Solitary confinement.
30. Prisoners under sentence of death.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

31. Maintenance of certain prisoners from private sources.
32. Restriction on transfer of food and clothing between certain prisoners.
33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

34. Employment of civil prisoners.
35. Employment of criminal prisoners.
36. Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. Sick prisoners.
38. Record of directions of Medical Officers.
39. Hospital.

SECTION.

CHAPTER IX.

VISITS TO PRISONERS.

40. Visits to civil and unconvicted criminal prisoners.

41. Search of visitors.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

43. Power to arrest for offence under section 42.

44. Publication of penalties.

CHAPTER XI.

PRISON-OFFENCES.

45. Prison-offences.

46. Punishment of such offences.

47. Plurality of punishments under section 46.

48. Award of punishments under sections 46 and 47.

49. Punishments to be in accordance with foregoing sections.

SECTION.

50. Medical Officer to certify to fitness of prisoner for punishment.

51. Entries in punishment-books.

52. Procedure on committal of heinous offence.

53. Whipping.

54. Offences by prison sub-ordinates.

CHAPTER XII.

MISCELLANEOUS.

55. Extramural custody, control and employment of prisoners.

56. Confinement in irons.

57. Confinement of prisoners under sentence of transportation in irons.

58. Prisoners not to be ironed by Jailor except under necessity.

59. Power to make rules.

60. Power of Government to make rules.

61. Exhibition of copies of rule.

62. Exercise of powers of Superintendent and Medical Officer.

THE PRISONS ACT, 1977 (1920 A. D.)

Act No. XXXI of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.* 14-*L*/81).]

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in the State and to provide rules for the regulation of such prisons ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

[1]**1.** Omitted.

2. Omitted.

Definitions.

3. In this Act—

(1) "prison" means any jail or place used permanently or temporarily under the general or special orders of [2][the Government] for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(*a*) any place for the confinement of prisoners who are exclusively in the custody of the police ;

(*b*) any place specially appointed by [2][the Government] under section 541 of the Code of Criminal Procedure ; or

(*c*) any place which has been declared by [2][the Government], by general or special order, to be a subsidiary jail :

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial :

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, or under the Prisoners Act, 1977 ;

1. Short title, extent and commencement are given and regulated by Act IV of 1977.
2. In sections 3(1), 5, 6, 7, 11(2), 38, 41, 46, 56, 59, 60 and 62 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.

(4) "civil prisoner" means any prisoner who is not a criminal prisoner :

(5) "remission system" means the rules for the time being in force regulating the award of marks to and the consequent shortening of sentences of, prisoners in jails :

(6) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder :

(7) "Inspector General" means [the officer for the time being appointed by the Government as] the Inspector General of Prisons :

(8) "Medical Subordinate" means an Assistant Surgeon, Apothecary or qualified Sub-Assistant Surgeon : and

(9) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

Accommodation for prisoners.

4. The Government shall provide, for the prisoners in the State, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

Inspector General.

5. The [2][Inspector General] shall exercise, subject to the orders of [3][the Government] , the general control and superintendence of all prisons situated in the State.

Officers of prisons.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailor and such other officers as [3][the Government] think necessary.

Temporary accommodation for prisoners.

7. Whenever it appears to the [4][Inspector General] that the number of prisoners in any prison is greater than can conveniently or safely

1. In section 3 (7) words within brackets added *vide* Act X of 1996.

2. Section 5 amended by Notification 29-L/1989 published in Government Gazette dated 10th Bhaoon 1989 is further amended by substitution of the word "Inspector General" *vide*, Act X of 1996 for the words "Director of Medical Services."

3. See foot-note under section 3 (1).

4. Sections 7, 11 (1), 14, 16, 31, 56 and 57 the words "Inspector General" substituted for "Minister-in-charge" *vide* Act X of 1996.

be kept therein, and it is not convenient to transfer the excess number to some other prison,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as [1][the Government] may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

Control and duties of officers of prisons.

8. All officers of a prison shall obey the directions of the Superintendent ; all officers subordinate to the Jailor shall perform such duties as may be imposed on them by the Jailor with the sanction of the Superintendent or be prescribed by rules under section 60.

Officers not to have business dealings with prisoners.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

Officers not to be interested in prison contracts.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison : nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Superintendent.

Superintendent.

11. (1) Subject to the orders of the [2][Inspector General] the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by [1][the Government], the Superintendent of a prison other than a central prison shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall re-

1. See foot-note under section 3(1).
2. See foot-note under section 7.

port to the Minister-in-charge all such orders, and the action taken thereon.

Records to be kept by Superintendent.

12. The Superintendent shall keep, or cause to be kept, the following records :—

(1) a register of prisoners admitted ;

(2) a book showing when each prisoner is to be released;

(3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences ;

(4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison ;

(5) a record of the money and other articles taken from prisoners ;

and all such other records as may be prescribed by rules under section 59 or section 60.

Medical Officer.

Duties of Medical Officer.

13. Subjcet to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Government under section 60.

Medical Officer to report in certain cases.

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the [1][Inspector General] for information.

Report on death of prisoners.

15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely :—

(1) the day on which the deceased first complained of illness or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,

(3) the scale of his diet on that day,

(4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness,

1. See foot-note under section 7.

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a post-mortem examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required.

Jailor.

Jailor.

16. (1) The Jailor shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailor shall not, without the [1][Inspector General's] sanction in writing, be concerned in any other employment.

Jailor to give notice of death of prisoner.

17. Upon the death of a prisoner, the Jailor shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

Responsibility of Jailor.

18. The Jailor shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

Jailor to be present at night.

19. The Jailor shall not be absent from the prison for a night without permission in writing from the Superintendent ; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Powers of Deputy and Assistant Jailors.

20. Where a Deputy Jailor or Assistant Jailor is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailor under this Act or any rule thereunder.

Subordinate Officers.

Duties of gate-keeper.

21. The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailor.

1. See foot-note under section 7.

22. Officers subordinate to the Jailor shall not be absent from the prison without leave from the Superintendent or from the Jailor.

Subordinate officers not to be absent without leave.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of [1]Ranbir Dand Bidhi.

Convict officers.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

Prisoners to be examined on admission.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailor, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailor.

Effects of prisoners.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

Removal and discharge of prisoners.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

---

2. Ranbir Penal Code.

CHAPTER V.

DISCIPLINE OF PRISONERS.

Separation of prisoners.

27. The requisitions of this Act with respect to the separation of prisoners are as follows :—

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners :

(2) in a prison where male prisoners under the age of eighteen are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not :

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners : and

(4) civil prisoners shall be kept apart from criminal prisoners.

Association and segregation of prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

Solitary confinement.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

Prisoners under sentence of death.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

Maintenance of certain prisoners from private sources.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the [1][Inspector General.]

Restriction on transfer of food and clothing between certain prisoners.

32. No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Employment of civil prisoners.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such

1. See foot-note under section 7.

as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

Employment of criminal prisoners.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

Employment of criminal prisoners sentenced to simple imprisonment.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

CHAPTER VIII.

HEALTH OF PRISONERS.

Sick-prisoners.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailor.

(2) The Jailor shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendance, shall be entered day by day in the prisoner's history-ticket or in such other record as [1][the Government] may by rule direct, and the Jailor shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailor thinks fit to make, and the date of the entry.

Record of directions of Medical Officers.

39. In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

Hospital.

CHAPTER IX.

VISITS TO PRISONERS.

40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Visits to civil and unconvicted criminal prisoners.

41. (1) The Jailor may demand the name and address of any visitor to a prisoner, and, when the Jailor has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

Search of visitors.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailor may deny him admission ; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as [1][the Government] may direct.

---

1. See foot-note under section 3(1).

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

42. Whoever, contrary to any rule under section 60, introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Power to arrest for offence under section 42.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police officer, and thereupon such Police officer shall proceed as if the offence had been committed in his presence.

Publication of penalties.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI.

PRISON OFFENCES.

Prison-offences.

45. The following acts are declared to be prison-offences when committed by a prisoner :—

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence ;

(2) any assault or use of criminal force ;
(3) the use of insulting or threatening language ;
(4) immoral or indecent or disorderly behaviour ;
(5) wiltully disabling himself from labour ;
(6) Contumaciously refusing to work ;
(7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority ;
(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment ;
(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;
(10) wilful damage to prison-property ;
(11) tampering with or defacing history-tickets, records or documents ;
(12) receiving, possessing or transferring any prohibited article ;
(13) feigning illness ;
(14) wilfully bringing a false accusation against any officer or prisoner ;
(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and
(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Punishment of such offences.

46. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning :

EXPLANATION.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket ;

(2) change of labour to some more irksome or severe form ;

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment ;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rule made by [1][the Government] ;

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months ;

1. See foot-note under section 3(1).

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by [1][the Government] ;

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by [1][the Government] ;

(8) separate confinement for any period not exceeding six months :

EXPLANATION.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners ;

(9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescibed by [1][the Government] :

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week ;

(10) cellular confinement for any period not exceeding fourteen days :

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement :

EXPLANATION.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners ;

(11) solitary confinement for any period not exceeding seven days :

Provided that after each period of solitary confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to solitary or cellular confinement :

EXPLANATION.—Solitary confinement means such confinement with or without labour as entirely secludes the prisoner both from sight of, and communication with, other prisoners ;

(12) penal diet as defined in clause (9) combined with solitary confinement as defined in clause (11) ;

(13) whipping, provided that the number of stripes shall not exceed thirty :

1. See foot-note under section 3 (1).

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

Plurality of punishments under section 46.

47. Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely :—

(1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section;

(2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with solitary confinement ;

(3) solitary confinement shall not be combined with cellular confinement or with separate confinement, nor cellular confinement with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable

(4) whipping shall not be combined with any other form of punishment except cellular and separate confinement and loss of privileges admissible under the remission system.

Award of punishments under sections 46 and 47.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Minister-in-charge.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

Punishments to be in accordance with foregoing sections.

49. Except by order of a Court of justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Medical Officer to certify to fitness of prisoner for punishment.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit

to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absoultely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Entries in punishment-books.

51. (1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailor and Superintendent shall affix their initials as evidence of the correctness of the entries.

Procedure on committal of heinous offence.

52. If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the 1st class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one ; year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46 :

Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class : and

Provided also that no person shall be punished twice for the same offence.

Whipping.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

Offences by prison subordinates.

54. (1) Every Jailor or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of cowardice, shall be liable on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

Extramural custody, control and employment of prisoners.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

Confinement in irons.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the [1][Inspector General] with the sanction of [2][the Government], so confine them.

Confinement of prisoners under sentence of transportation in irons.

57. (1) Prisoners under sentence of transporatation may, subject to any rules made under section 60, be confined in fetters for the first three months after admission to prison.

(2) should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the [1][Inspector General] for sanction to their retention for the period for which he considers their retention necessary, and the [1][Inspector General] may sanction such retention accordingly.

Prisoners not to be ironed by Jailor except under necessity.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailor of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Power to make rules.

59. [2][The Government] may make rules consistent with this Act.

(1) defining the acts which shall constitute prison-offences ;

(2) determining the classification of prison-offences into serious and minor offences ;

(3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof ;

(4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the [3]Ranbir Dand Bindi may or may not be dealt with as a prison-offence ;

(5) for the award of marks and the shortening of sentences ;

(6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape ;

1. See foot-note under section 7.
2. See foot-note under section 3(1).
3. Ranbir Penal Code.

(7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released ;

(8) regulating the transfer from one part of the State to another of prisoners whose term of transportation or imprisonment is about to expire ; and,

(9) generally for carrying into effect the purposes of this Act.

Power of the Government to make rules.

60. [1][The Government] may make rules consistent with this Act—

(*a*) for the classification of prisons, and description and construction of wards, cells and other places of detention :

(*b*) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons ;

(*c*) for the government of prisons and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act ;

(*d*) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost ;

(*e*) for the employment, instruction and control of convicts within or without prisons ;

(*f*) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited ;

(*g*) for classifying and prescribing the forms of labour and regulating the periods of rest from labour ;

(*h*) for regulating the disposal of the proceeds of the employment of prisoners ;

(*i*) for regulating the confinement in fetters of prisoners sentenced to transportation ;

(*j*) for the classification and the separation of prisoners;

(*k*) for regulating the confinement of convicted criminal prisoners under section 28 ;

(*l*) for the preparation and maintenance of history-tickets ;

(*m*) for the selection and appointment of prisoners as officers of prisons ;

(*n*) for rewards for good conduct ;

(*o*) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire ;

1. See foot-note under section 3(1).

(*p*) for the treatmenet, transfer and disposal ot criminal lunatics or recovered criminal lunatics confined in prisons ;

(*q*) for regulating the transmission ot appeals and petitions from prisoners and their communications with their friends ;

(*r*) for the appointment and guidance ot visitors of prisons ;

(*s*) tor extending any or all of the provisons of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, and to the officers employed, and the prisoners confined, therein ; and,

(*t*) generally, in regard to the admission, custody employment, dieting, treatment and release ot prisoners and tor other purposes consistent with this Act.

Exhibition of copies of rules.

61. Copies of rules, under sections 59 and 60, so far as they affect the government of prisons, shall be exhibited, both in English and in Vernacular, in some place to which all persons employed within a prison have access.

Exercise of powers of Superintendent and Medical Officer.

62. All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as [1][the Government] may appoint in this behalf either by name or by his official designation.

1. See foot-note under section 3(1).

THE PRISONERS ACT, 1977 (1920 A.D.)

ACT No. XXXIII of 1977.

CONTENTS.

SECTION.

PART I.

PRELIMINARY.

1. Omitted.
2. Definitions.

PART II.

GENERAL.

3. Officers in charge of prisons to detain persons duly committed to their custody.
4. Officers in charge of prisons to return writs etc., after execution or discharge.

PART III.

5 to 13 Omitted.

PART IV.

PRISONERS.

14. Omitted.
15. Power for officers in charge of prisons to give effect to sentences of certain Courts.
16. Warrant of officer of such Court to be sufficient authority.
17. Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.
18. Omitted.

PART V.

SERVITUDE.

19 to 27. Omitted.

PART VI.

REMOVAL OF PRISONERS.

28. Omitted.
29. Removal of prisoners.
30. Lunatic prisoners how to be dealt with.
31. Omitted.

PART VII.

PERSONS UNDER SENTENCE OF IMPRISONMENT FOR LIFE.

32. Appointment of places for confinement of persons under sentence of imprisonment for life and removal thereto.

PART VIII.

DISCHARGE OF PRISONERS.

33. Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

SECTION.

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

34. Omitted.

35. Power for Civil Courts to require appearance of prisoner to give evidence.

36. District Judge in certain cases to countersign orders made under section 35.

37. Powers for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

38. Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

39. Procedure where removal is desired of person confined more than one hundred miles from place where evidence is required.

40. Omitted.

41. Prisoner to be brought up.

42. Power to Government to exempt certain prisoners from operation of this Part.

SECTION.

43. Officer in charge of prison when to abstain from carrying out order.

Commissions for Examination of Prisoners.

44. Commissions for examination of prisoners.

45. Omitted.

46. Commission how to be directed.

Service of Process on Prisoners.

47. Process how served on prisoners.

48. Process served to be transmitted at prisoner's request.

Miscellaneous.

49. Omitted.

50. Deposit of costs.

51. Power to make rules under this Part.

52. Power to declare who shall be deemed officer in charge of prison.

53. Omitted.

The First Schedule.

The Second Schedule.

The Third Schedule—Omitted.

THE PRISONERS ACT, 1977 (1920 A. D.)

Act No. XXXIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and the State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81).]

An Act to consolidate the law relating to Prisoners confined by order of a Court.

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court ; It is hereby enacted as follows :—

PART 1.

PRELIMINARY.

[1]**1.** Omitted.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) "Court" includes any officer lawfully exercising civil, criminal or revenue jurisdiction ; and

(*b*) "prison" includes any place which has been declared by [2][the Government], by general or special order, to be a subsidiary jail.

PART II.

GENERAL.

Officers in charge of prisons to detain persons duly committed to their custody.

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

1. Short title, extent and commencement are given and regulated by Act IV of 1977
2. In sections 2, 17, 29(1) & (2), 32, 42, "51 and 52 words "the Government" substituted for "His Highness" *vide* Act X of 1996.

EXPLANATION.—For the purpose of execution, a sentence of "imprisonment for life" shall mean a sentence of imprisonment for 20 years.

Officers in charge of prisons to return writs, etc., after execution or discharge.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

PART III.

5 to **13**. Omitted.

PART IV.

PRISONERS.

14. Omitted.

Power for officers in charge of prisons to give effect to sentences of certain Courts.

15. Officers in charge of prisons shall give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal in the State.

Warrant of officer of such Court to be sufficient authority.

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in persuance of the sentence passed upon him.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to [1][the Government], by whose order on the case he and all other public officers shall be guided as to the future disposal

1. See foot-note under section 2.

of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

18. Omitted.

PART V.

SERVITUDE.

19 to **27.** Omitted.

PART VI.

REMOVAL OF PRISONERS.

28. Omitted.

Removal of prisoners.

29. (1) [1][The Government] may, by general or special order, provide for the removal of any prisoner confined in a prison—

(*a*) under sentence of death, or

(*b*) under, or in lieu of, a sentence of imprisonment or imprisonment for life, or

(*c*) in default of payment of a fine, or

(*d*) in default of giving security for keeping the peace or for maintaining good behaviour,

to any other prison in the State.

(2) [1][The Government], and (subject to its orders and under its control) the [2][Inspector General] may in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State.

Lunatic prisoners how to be dealt with.

30. (1) Where it appears to [3][the Government] that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, [3][the Government] may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State, there to be kept and treated as [3][the Government] directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or

1. See foot-note under section 2.
2. In section 29 (2) words "Inspector General" substituted for "Minister-in-charge" *vide* Act, X of 1996.
3. Substituted *vide* Act VII of 2001 for "His Highness".

others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to [1][the Government] that the prisoner has become of sound mind, [1][the Government] shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 31 of Lunacy Act, shall apply to every person contined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

31. Omitted.

PART VII.

PERSONS UNDER SENTENCE OF IMPRISONMENT FOR LIFE.

Appointment of places for confinement of persons under sentence of imprisonment for life and removal thereto.

32. [2][The Government] may appoint places within the State to which persons under sentence of imprisonment for life shall be sent; and [1][the Government], or some officer duly authorised in this behalf by [2][the Government], shall give orders for the removal of such persons to the places so appointed, except when sentence of imprisonment for life is passed on a person already undergoing imprisonment for life under a sentence previously passed for another offence.

PART VIII.

DISCHARGE OF PRISONERS.

Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

33. The High Court may, in any case in which it has recommended to [3][the Sadar-i-Riyasat] the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

1. Substituted *vide* Act VII of 2001 for "His Highness".
2. See foot-note under section 2.
3. Substituted *vide* Act X of 2010 for "His Highness".

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDNACE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

34. Omitted.

Power for Civil Courts to require appearance of prisoner to give evidence.

35. Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdicition, if it is the High Court, or, if it is not the High Court, then within the local limits of the appellate jurisdiction of the High Court, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District tudge in certain cases to countersign orders made under section 35.

36. (1) Where an order under section 35 is made in any civil matter pending —

(*a*) in a Court subordinate to the District Judge, or

(*b*) in a Court of Small Causes,

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(*i*) the District Judge to which the Court is subordinate, or

(*ii*) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompained by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the tacts which in his opinion render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

37. Subject to the provisions of section 39, any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, it it is the High Court, or, if it is not the High Court, then within the local limits of the appellate jurisdiction of the High Court, is material in any matter

pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the officer in charge of the prison :

Provided that if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate or within the local limits of whose jurisdiction such Criminal Court is situated.

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

38. Where any person, for whose attendance an order as in this Part provided is made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Procedure where removal is desired of person confined in a prison more than one hundred miles from place where evidence is required.

39. (1) Where a person is confined in a prison more than one hundred miles distant from the place where any Court, subordinate to the High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

40. Omitted.

Prisoner to be brought up.

41. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his

attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorises him to be taken back to the prison in which he was confined.

Power to Government to exempt certain prisoners from operation of this Part.

42. [1][The Government] may, by notification in the Government Gazette, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Part, other than those contained in sections 44 to 46, shall not apply to such person or class of persons.

Officer in charge of prison when to abstain from carrying out order.

43. In any of the following cases, that is to say,—

(*a*) where the person named in any order made under section 35, section 37 or section 39 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined, shall apply to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the prison is situate and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed ; or

(*b*) where the person named in any such order is under committal for trial ; or

(*c*) where the person named in any such order is under a remand pending trial or pending a preliminary investigation; or

(*d*) where the person named in any such order is in custody for a period which whuld expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined ;

the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued a statement of the reason for so abstaining :

Provided that such officer as aforesaid shall not so abstain where—

(*i*) the order has been made under section 37 ; and

1. See foot-note under section 2.

(*ii*) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed ; and

(*iii*) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

Commissions for Examination of Prisoners.

Commissions for examination of prisoners.

44. In any of the following cases, that is to say,—

(*a*) where it appears to any Civil Court that the evidence of a person confined in any prison, who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it ; or

(*b*) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distance from the place at which such Court is held, is material in any such matter ; or

(*c*) where the District Judge declines, under section 36, to countersign an order for removal ;

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined.

45. Omitted.

Commission how to be directed.

46. Every commission for the examination of a person issued under section 44 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Service of Process on Prisoners.

Process how served on prisoners.

47. When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof.

48. (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process.

Process served to be transmitted at prisoner's request.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

Miscellaneous.

49. Omitted.

50. No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Deposit of costs.

Provided that, if upon any application for such order it appears to the Court to which the application is made, that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

51. (1) [1][The Government] may make rules—

Power to make rules under this Part.

(*a*) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance;

(*b*) for regulating the amount to be allowed for the costs and charges of such escort; and

(*c*) for the guidance of officers in all other matters connected with the enforcemcent of this Part.

(2) All rules made under sub-section (1) shall be published in the Jammu and Kashmir Government Gazette, and shall, from the date of such publication, have the same force as if enacted by this Act.

1. See foot-note under section 2.

52. '[The Government] may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

Power to declare who shall be deemed officer in charge of prison.

53. Omitted.

THE FIRST SCHEDULE.

(*See sections* 35 *and* 37.)

Court of ,

To the officer in charge of the (*state name of prison*).

You are hereby required to produce , now a prisoner in , under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day, there to give evidence in a matter now pending before the said Court, and after the said has then and there given his evidence before the said Court or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the prison.

The day of .

A. B.
(Countersigned) *C. D.*

THE SECOND SCHEDULE.

(*See section* 37.)

Court of .

To the officer in charge of the (*state name of prison*).

You are hereby required to produce , now a prisoner in , under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before the said Court, and

1. See foot-note under section 2.

after such charge has been disposed of or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

The day of .

A. B.

(Countersigned) *C. D.*

THE THIRD SCHEDULE.

Omitted.

THE POISONS ACT, 1977 (1920 A. D.)

Act No. XXXIV of 1977.

CONTENTS.

SECTION.

1. Omitted.

Poisons Generally.

2. Power to regulate possession for sale and sale of any poison in certain areas.

White Arsenic.

3. Power to prohibit importation into the State of white arsenic except under licence.

4. Power to regulate possession for sale and sale of white arsenic throughout the State.

5. Power to regulate possession of white arsenic in certain tracts.

SECTION.

Other Poisons.

6. Power to apply Act to other Poisons.

Penalties and Procedure.

7. Penalty for unlawful importation etc.

8. Power to issue search warrant.

9. Rules.

Savings.

10. Savings.

11. Omitted.

THE POISONS ACT, 1977 (1920 A. D.)

Act No. XXXIV of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81).]

An Act to provide for the regulation of the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally.

WHEREAS it is expedient to make provision for regulating the possession and sale of all poisons in certain local areas, and the importation, possession and sale or white arsenic ; It is hereby enacted as follows:—

[1]**1.** Omitted.

Poisons generally.

2. (1) [2][The Government] may, by rule, regulate within the limits of any municipality or cantonment the possession for sale and the sale, whether wholesale or by retail, of any specified poison.

Power to regulate possession for sale and sale of any poison in certain areas

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide for, amongst other matters,—

(*a*) the grant of licences to possess any specified poison for sale, wholesale or by retail, and the fixing of the fee (if any) to be charged for such licenses;

(*b*) the classes of persons to whom alone such licences may be granted;

(*c*) the classes of persons to whom alone any such poison may be sold;

(*d*) the maximum quantity of any such poison which may be sold to any one person;

(*e*) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same;

(*f*) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale; and

1. Short title, extent and commencement are given and regulated by Act IV of 1977

2. In sections 2, 3, 4, 5, 6, 9, and 10 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

(3) Any substance specified as a poison in a rule made under this section shall be deemed to be a poison for the purposes of this Act.

White Arsenic.

Power to prohibit importation into the State of white arsenic except under licence.

3. [1][The Government] may, by notification in the Jammu and Kashmir Government Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation of white arsenic into the State, and may, by rule, regulate the grant of licences and prescribe the conditions to be imposed thereby under this section.

Power to regulate possession for sale and sale of white arsenic throughout the State.

4. (1) [1][The Government] may, by rule, regulate within the whole or any part of the State the possession for sale and the sale whether wholesale or by retail, of white arsenic.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide, amongst other matters, for all or any of the matters specified in section 2, sub-section (2).

(3) Rules made under sub-section (1) may further provide that no person shall sell any powdered white arsenic unless the same is, before the sale thereof, mixed with soot, indigo or Prussian blue in the proportion of half an ounce of soot, indigo or Prussian blue at least to one pound of the white arsenic, and so in proportion for any greater or less quantity:

Provided that, where such arsenic is stated by the purchaser to be required for some purpose for which such admixture would, according to the representation of the purchaser render it unfit, such arsenic may be sold, without such admixture, in a quantity of not less than ten pounds at any one time.

Power to regulate possession of white arsenic in certain tracts.

5. (1) [1][The Government] may further, by rule, regulate the possession of white arsenic in any local area in which murder by poisoning with that drug or the offence of mischief by poisoning cattle therewith appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

1. See foot-note under section 2.

(2) In making any rule under sub-section (1), [1][The Government] may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the white arsenic in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

Other Poisons.

Power to apply Act to other poisons.

6. (1) [1][The Government] may, by notification in the Jammu and Kashmir Government Gazette, apply to any specified poison other than white arsenic all or any of the provisions of this Act relating exclusively to white arsenic.

(2) Any substance specified as a poison in a notification issued under sub-section (1) shall be deemed to be a posion for the purposes of this Act.

Penalties and Procedure.

Penalty for unlawful importation, etc.

7. (1) Whoever,—

(*a*) commits a breach of any rule made under section 2 or section 4, or

(*b*) imports into the State, without a licence, white arsenic the importation of which is for the time being restricted under section 3, or

(*c*) breaks any condition of a licence for the importation of white arsenic granted to him under section 3,

shall be punishable,—

(*i*) on a first conviction, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and

(*ii*) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) any poison in respect of which an offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, and, in the case of any offence mentioned in clause (b) or clause (c) of sub-section (1), any animals and conveyances used in carrying it, shall be liable to confiscation.

Power to issue search-warrant.

8. (1) The District Magistrate and the Sub-divisional Magistrate, respectively, may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule there-

1. See foot-note under section 2.

under or that any poison liable to confiscation under this Act is kept or concealed.

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provisions of the Code of Criminal Procedure, relating to search warrants shall, as far as may be, be deemed to apply to the execution of the warrant.

Rules.

9. (1) In addition to any other power to make rules hereinbefore conferred, [1][The Government] may make rules generally to carry out the purposes and objects of this Act.

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by [1][the Government] under this Act shall be published in the Jammu and Kashmir Government Gazette and on such publication shall have effect as if enacted in this Act.

Savings.

Savings.

10. (1) Nothing in this Act or in any licence granted or rule made thereunder shall extend to or interfere with anything done in good faith in the exercise of his profession or business as such—

(*a*) by a medical or veterinary practitioner, or

(*b*) by a chemist or druggist duly qualified to act as such under the law for the time being in force in the State, or

(*c*) by a chemist, druggist or compounder dispensing or compounding in compliance with the prescription of a medical or veterinary practitioner, or

(*d*) subject to any rules for the time being in force under section 5, by a tanner or hide-merchant.

(2) Notwithstanding anything hereinbefore contained, [1][the Government] may, in its discretion, by general or special order, declare that all or any of the provisions of this Act shall not be deemed to apply to any article, or class of articles, of commerce specified in such order, or to any poison, or class of poisons used for any purpose so specified, and may, from time to time, alter or vary any such declaration.

(3) The authority on which any power to make rules under this Act is conferred may, by general or special order, exempt any person or class of persons, either generally or in respect of any poison or poisons specified in the order, from the operation of any such rules.

11. Omitted.

---

1. See foot-note under section 2.

THE REGISTRATION ACT, 1977. (1920 A. D.)

Act No. XXXV of 1977.

CONTENTS.

SECTION. SECTION.

PART I.

PRELIMINARY.

1. Omitted.
2. Definitions.

PART II.

OF THE REGISTRATION ESTABLISHMENT.

3. Inspector General of Registration
4. Omitted.
5. Districts and Sub-districts.
6. Registrars and Sub-Registrars.
7. Offices of Registrar and Sub-Registrar.
8. Omitted.
9. Omiteed.
10. Absence of Registrar or vacancy in his offiice.
11. Absence of Registrar on duty in his district.
12. Absence of Sub-Registrar or vacancy in his office,
13. Omitted,
14. Remuneration and establishments of registering officers.
15. Seal of registering officers.
16. Register-books and fire-proof boxes.

PART III.

OF REGISTRABLE DOCUMENTS.

17. Documents of which registration is compulsory.
18. Documents of which registration is optional.
19. Documents in language not understood by registering officer.
20. Documents containing interlineations, blanks, erasures or alterations.
21. Description of property and maps or plans.
22. Description of houses and land by reference to Government maps or surveys.

PART IV.

OF THE TIME OF PRESENTATION.

23. Time for presenting documents.
23-A. Re-registration of certain documents.
24. Document executed by several persons at different times.
25. Provision where delay in presentation is unavoidable.

SECTION.

26. Documents executed out of the State.

27. Wills may be presented or deposited at any time.

PART V.

OF THE PLACE OF REGISTRATION.

28. Place for registering documents relating to land.

29. Place for registering other documents.

30. Registration by Registrars in certain cases.

31. Registration or acceptance for deposit at private residence.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Persons to present documents for registration.

33. Power-of-attorneay recognizable for purposes of section 32.

34. Enquiry before registration by registering officer.

35. Procedure on admission and denial of execution respectively.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. Procedure where appearance of executant or witness is desired.

SECTION.

37. Officer of Court to issue and cause service of summons.

38. Persons exempt from appearance at registration-office.

39. Law as to summonses, commissions and witnesses.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. Persons entitled to present wills and authorities to adopt.

41. Registration of wills and authorities to adopt.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Deposit of wills.

43. Procedure on deposit of wills.

44. Withdrawal of sealed cover deposited under section 42.

45. Proceedings on death of depositor.

46. Saving of certain enactments and powers of Courts.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. Time from which registered document operates.

48. Registered documents relating to property when to take effect against oral agreements.

SECTION.

49. Effect of non-registration of documents required to be registered.

50. Certain registered documents relating to land to take effect against un-registered documents.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) As to the Register-books and Indexes.

51. Register-books to be kept in the several offices.

52. Duties of registering officers when document presented.

53. Entries to be numbered consecutively.

54 Current indexes and entries therein.

55. Indexes to be made by registering officers, and their contents.

56. Omitted.

57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(B) As to the Procedure on admitting to Registration.

58. Particulars to be endorsed on documents admitted to registration.

59. Endorsements to be dated and signed by the registering officer.

60. Certificate of registration

61. Endorsements and certificate to be copied and thereupon

SECTION.

on sanction by Sadar-i-Riyasat if required to be submitted to him, document returned.

62. Procedure on presenting document in language unknown to registering officer.

63. Power to administer oaths and record of substance of statements.

(C) Special Duties of Sub-Registrar.

64. Procedure where document relates to land in several sub-districts.

65. Procedure where document relates to land in several districts.

(D) Special Duties of Registrar.

66. Procedure after registration of documents relating to land.

67. Procedure after registration under section 30, sub-section (2).

(E) Of the controlling Powers of Registrars and Inspector General.

68. Power of Registrar to superintend and control Sub-Registrars.

69. Power of Inspector General to superintend registration offices and make rules.

70. Power of Inspector General to remit fines.

PART XII.

OF REFUSAL TO REGISTER.

71. Reasons for refusal to register to be recorded.

SECTION.

72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.

74. Procedure of Registrar on such application.

75. Order by Registrar to register and procedure thereon.

76. Order of refusal by Registrar.

77. Suit in case of order of refusal by Registrar.

———

PART XIII,

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. Fees.

79. Fees may be remitted or reduced by the Government.

80. Fees payable on presentation.

———

PART XIV.

OF PENALTIES.

81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

82. Penalty for making false statements, delivering false copies or translations, false personation and abetment.

SECTION.

83. Registering officers may commence prosecutions.

84. Registering officers to be deemed public servants.

———

PART XV.

MISCELLANEOUS.

85. Destruction of unclaimed documents.

86. Registering officer not liable for thing *bona fide* done or refused in his official capacity.

87. Nothing so done invalidated by defect in appointment or procedure.

88. Registration of documents executed by Government officers or certain public functionaries.

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed

Exemptions from Act.

90. Exemption of certain documents executed by or in favour of Government.

91. Inspection and copies of such documents.

92. Omitted.

93. Omitted.

94. Loss of documents.

———

THE REGISTRATION ACT, 1977 (1920 A. D.)

Act No. XXXV of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920, *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification* 14-*L*/81).]

An Act to consolidates the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

[1] **1.** Omitted.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of an Indian, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name :

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) "district" and "sub-district" respectively mean a district and sub-district formed under this Act:

(4) Omitted.

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to. arise out of land, and things attached to the earth or premanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :

1. Short title, extent and commencement are given and regulated by Act IV of 1977.

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease:

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority:

(9) "movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property : and

(10) "respresentative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

Inspector General of Registration.

3. (1) [1][The Government] shall appoint an officer to be the Inspector General of Registration for the Jammu and Kashmir State:

Provided that [1][the Government] may, instead of making such appointment, direct that all or any of the powers and duties thereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as [1][the Government] appoint in this behalf.

(2) The Inspector General may hold simultaneously any other office under Government.

4. Omitted.

Districts and sub-districts.

5. (1) For the purpose of this Act, [1][the Government] shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Government Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars and Sub-Registrars.

6. [1][The Government] may appoint such public officers as it thinks proper to be District Registrars and [2][x x x x] may appoint Sub-Registrars according to the sanctioned cadre and may also invest such public officers [3][as the Government think] proper with powers of a Sub-Registrar for the several sub-districts.

1. In sections 3, 5, 6, 7, 10, 14, 15, 16, 17, 22, 29, 36, 69 (2) and 91 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.
2. The words the "Inspector General" omitted *vide* Act XIV of 2004.
3. Substituted *vide* Act XIV of 2004 for "as he thinks"

7. (1) [1][The Government] shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the joint Sub-Registrars.

Offices of Registrar and Sub-Registrar.

(2) [1][The Government] may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. Omitted.

9. Omitted.

10. (1) When any Registrar is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General invests with powers in this behalf, shall perform the duties of the Registrar during such absence or until [1][the Government] fill up the vacancy.

Absence of Registrar or vacancy in his office.

(2) Omitted.

11. When any Registrar is absent from his office on duty in his district, he may authorise any Sub-Registrar to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

Absence of Registrar on duty in his district.

12. When any Sub-Registrar is absent, or when his office is temporarily vacant, any public officer whom the Registrar of the district authorises in this behalf shall be Sub-Registrar during such absence or until the vacancy is filled up. [2][x x x x x]

Absence of Sub-Registrar or vacancy in his office.

13. Omitted.

14. (1) [3][The Government may assign such salaries as the Government deem proper] to the registering officers appointed under this Act or provide for their remuneration by fees, or partly by fees and partly by salaries.

Remuneration and establishments of registering officers.

1. See foot-note under section 3.
2. The words "by the Inspector General of Registration" omitted *vide* Act XIV of 2004.
3. Substituted *vide* Act XIV of 2004 for certain words.

(2) [1][The Government] may allow proper establishments for the several offices under this Act.

Seal of Registering officers.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as [1][the Government] direct :—"The seal of the Registrar (or of the Sub-Registrar) of ."

Register books and fire proof boxes.

16. (1) The Inspector General of Registration shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of [1][the Government], and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Inspector General of Registration shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTERABLE DOCUMENTS.

Documents of which registration is compulsory

17. (1) The following documents shall be registered, namely :—

(*a*) instruments of gift of immovable property ;

(*b*) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property ;

(*c*) non testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ;

(*d*) any partnership deed ;

(*e*) any adoption deed ;

(*f*) any non-testamentary authority to adopt ; and

(*g*) leases of immoveable property for any term exceeding one year, and reserving a yearly rent exceeding fifty rupees ;

1. See foot-note under section 3.

[1][(*h*) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property:]

Provided that [2][the Government] may, by order published in the Jammu and Kashmir Government Gazette, exempt from the operation of this sub-section any such leases executed in any district, or part of a district.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(*i*) any composition-deed ; or

(*ii*) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property ; or

(*iii*) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(*iv*) any endorsement upon or transfer of any debenture issued by any such Company ; or

(*v*) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ; or

(*vi*) any decree or order of a Court [3][except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding ;] or

(*vii*) any grant of immovable property by Government ; or

(*viii*) any instrument of partition made by a Revenue officer ; or

(*ix*) [4][Any order granting a loan under authority of Cabinet Order No. 1547-C of 1953 dated 15th December, 1953.]

1. Clause (h) to section 17 (1) added *vide* Act VII of 1996.
2. See foot-note under section 3.
3. In section 17 (2) (vi) words within brackets substituted for the words "and any award" *vide* Act VII of 1996.
4. Clause (ix) inserted *vide* Act VI of 1955.

(*x*) any order granting a loan under the Agriculturists Loans Act, or instrument for securing the repayment of a loan made under that Act ; or

(*xi*) any endorsement on a mortgage-deed ackowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage.

(*xii*) Omitted.

[1][EXPLANATION.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any interest-money or of the whole or any part of the purchase-money.]

Documents of which registration is optional.

18. Any of the following documents may by registered under this Act, namely :—

(*a*) leases of immovable property from year to year or for any term below one year, and reserving a yearly rent of rupees fifty or less and leases exempted under section 17 ;

(*b*) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property ;

(*c*) wills ; and

(*d*) all other documents not required by section 17 to be registered.

Documents in language not understood by registering officer.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents containing interlineations, blanks, erasures or alterations.

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same make a note in the register of such interlineation, blank, erasure or alteration.

1. Explanation to section 17 (2) after clause (xii) added by Act II of 1988.

Description of property and maps or plans.

21. (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers it the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their names, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Description of houses and land by reference to Government maps or surveys.

22. (1) Where it is, in the opinion of [1][the Government], practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, [1][the Government] may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21 , be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

PART IV.

OF THE TIME OF PRESENTATION.

Time for presenting documents.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

1. See foot-note under section 3.

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Re-registration of certain documents.

23-A. Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to persent the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as it it had not been previously registered, and as if such presentation for registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration :

Provided that, within three months from the commencement of this Act, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.

Documents executed by several persons at different times.

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision where delay in presentation is unavoidable.

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in the State is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine

not exceeding five times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of the State.

26. When a document purporting to have been executed by all or any of the parties out of the State is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(*a*) that the instrument was so executed, and

(*b*) that it has been presented for registration within four months after its arrival in the State,

may, on payment of the proper registration-fee, accept such document for registration.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

Place for registering documents relating to land.

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d), (e), (f) and (g), and section 18, clause (a), shall be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

29. (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under [1][the Government] at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under [1][the Government] at

1. See foot-note under section 2.

which all the persons claiming under the decree or order desire the copy to be registered.

Registration by Registrars in certain cases.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him

(2) Omitted.

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit :

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents for registration,

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,—

(*a*) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(*b*) by the representative or assign of such person, or

(*c*) by the agent of such person, repesentative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Power-of-attorney recognizable for purposes of section 32.

33. (1) For the purposes of section 32, the following powers of attorney shall alone be recognized, namely :—

(*a*) if the principal at the time of executing the power-of-attorney resides in any part of the State, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(*b*) if the principal at the time aforesaid does not reside in the State, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, [1][Indian] Consul or Vice-Consul, or representative [2][x x x x x] of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section, namely:—

(*i*) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(*ii*) persons who are in jail under civil or criminal process; and

(*iii*) persons exempt by law from personal appearance in Court.

(2) in the case of every such person the Registrar or Sub-Registrar as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by registering officer.

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding five times the amount of the proper registration-fee, in

1. Substituted *vide* A. L. O. 2008 for "British".
2. The words "of His Majesty or" omitted *vide* A.L.O. 2008.

addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(*b*) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document ; and

(*c*) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Procedure on admission and denial of execution respectively.

35. (1) (*a*) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(*b*) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(*c*) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (*a*) If any person by whom the document purports to be executed denies its execution, or

(*b*) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(*c*) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document

as to the person so denying, appearing or dead :

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII :

[1][Provided further that the Inspector General of Registration with the sanction of [2][the Government] may, by notification in the Jammu and Kashmir Government Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and Part XII.]

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as [3][the Government] direct in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein,

Officer or Court to issue and cause service of summons.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration office.

38. (1) (*a*) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(*b*) a person in jail under civil or criminal process, or

(*c*) persons exempt by law from personal appearance in Court, and who would but for the provision next herinafter contained be required to appear in person at the registration-office,

shall not be required so to appear.

(2) In the case of every such person the registering officer

1. Further proviso to section 35 (3) added *vide* Act II of 1988.
2. Substituted *vide* Act VII of 2001 for "His Highness the Maharaja Bahadur"
3. See foot-note under section 3.

shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

Law as to summonses, commissions and witnesses.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

Persons entitled to present wills and authorities to adopt.

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt.

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(*a*) that the will or authority was executed by the testator or donor, as the case may be ;

(*b*) that the testator or donor is dead; and

(*c*) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

Deposit of wills.

42. Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

Procedure on deposit of wills.

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal of sealed cover deposited under section 42.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorised agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Proceedings on death of depositor.

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

Saving of certain enactments and powers of Courts.

46 (1) Nothing hereinbefore contained shall affect the provisions of section 81 of the Probate and Administration Act, or the power of any Court by order to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from which registered document operates.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had

been required or made, and not from the time of its registration.

Registered documents relating to property when to take effect against oral agreements.

48. All non-testamentary documents duly registered under this Act, and relating to any movable property, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession [1][and the same constitutes a valid transfer under any law for the time being in force].

Effect of non-registration of documents required to be registered.

49 No document required by section 17 [2][or by any provision of the Transfer of Property Act] to be registered shall—

(*a*) affect any immovable property comprised therein, or

(*b*) confer any power to adopt, or

(*c*) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Certain registered documents relating to land to take effect against unregistered documents.

50. Every document falling under any exemption mentioned in section 17, or clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered documents be of the same nature as the registered document or not.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(*A*) *As to the Register-books and Indexes.*

Register books to be kept in the several offices.

51. (1) The following books shall be kept in the several offices hereinafter named, namely :—

A—In all registration offices—

Book 1, "Register of non-testamentary documents relating to immovable property";

1. In section 48 words within brackets added *vide* Act VII of 1996.
2. In section 49 words within brackets added *vide* Act VII of 1996.

Book 2, "Record of reasons for refusal to register";
Book 3, "Register of wills and authorities to adopt"; and
Book 4, "Miscellaneous Register";

B—In the offices of Registrars—

Book 5, "Register of deposits of wills";

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immovable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (b) and (d) of section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

Duties of registering officers when document presented.

52. (1) (*a*) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(*b*) a receipt for such document shall be given by the registering officer to the person presenting the same; and,

(*c*) subject to the provisions contained in section 62, every document admitted to the registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

Entries to be numbered consecutively.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current indexes and entries therein.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to be made by registering officers and their contents.

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. I.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

56. Repealed.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to ths same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

1. Section 56 omitted *vide* Act II of 1988.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) As to the Procedure on admitting to Registration.

Particulars to be endorsed on documents admitted to registration.

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely :—

(*a*) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(*b*) the signature and addition of every person examined in reference to such document under any of the provisions of this Act ; and

(*c*) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Endorsements to be dated and signed by registering officer.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Certificate of registration.

60 (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Endorsements and certificate to be copied and thereupon, on sanction by the Sadar-i-Riyasat required to be submitted to him, document returned.

(2) If a document falls under clause (a) or (b) of sub-section (1) of section 17, the registering officer shall, after its registration in his office, submit it in the manner prescribed in this behalf for [1][the Sadar-i-Riyasat's] sanction.

[2](2-*a*) Notwithstanding anything to the contrary in sub-section (2) or in any other law, rule or order [1][the Sadar-i-Riyasat] may, by order published in the Jammu and Kashmir Government Gazette, subject to such conditions or restrictions (if any) as may be specified by [1][the Sadar-i-Riyasat], dispense with the submission to him, for his sanction of all or any class of the documents referred to in sub-section (2) and may also, by such order and subject to such conditions or restrictions (if any) authorise any officer to give sanction to all or any class of such documents.

(3) [2][On receipt of the sanction required under sub-section (2) or (2-a) as the case may be, or if the document does not require submission for such sanction,] on compliance with the procedure, hereinbefore provided, the registration of the document shall be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

Procedure on presenting document in language unknown to registering officer.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

1. Substituted *vide* Act X of 2010 for "His Highness' ".
2. Section 61, sub-section (2-a) added and words within brackets in sub-section (3) substituted *vide* Council Resolution No. 124 dated, 20th March, 1926 (Notifications I/L-83 published in Government Gazette dated 5th Jeth, 1983, (Extra).

Power to administer oaths and record of substance of statements.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(*C*) *Special Duties of Sub-Registrar.*

Procedure where document relates to land in several sub-districts.

64. Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure where document relates to land in several districts.

65. (1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property situate other than the district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate : and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D) Special Duties of Registrar.

Procedure after registration of documents relating to land.

66. (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure after registration under section 30, sub-section (2).

67. On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

(E) Of the Controlling Powers of Registrars and Inspector General.

Power of Registrar to superintend and control Sub-Registrars.

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with his Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office, in which any document has been registered.

Power of Inspector General to superintend registration offices and make rules.

69. (1) The Inspector General shall exercise a general superintendence over all the registration offices in [1][the territories of the State], and shall have power from time to time to make rules consistent with this Act—

1. Substituted *vide* Act X of 2010 for "the territories under His Highness".

(*a*) providing for the safe custody of books, papers and documents ;

(*b*) omitted ;

(*c*) omitted ;

(*d*) regulating the amount of fines imposed under sections 25 and 34, respectively ;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63 ;

(*f*) regulating the form in which registering officers are to make memoranda of documents ;

(*g*) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

(*h*) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ; and

(*i*) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to [1][the Government] for approval, and, after they have been approved, they shall be published in the Government Gazette, and on publication shall have effect as if enacted in this Act.

Power of Inspector General to remit fines.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.

PART XII.

OF REFUSAL TO REGISTER

Reasons for refusal to register to be recorded.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2, and endorse the words "registration refused" on the document ; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

1. See foot-note under section 3.

Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order ; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or hi srepresentative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Procedure of Registrar on such application.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have besn complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Order by Registrar to register and procedure thereon.

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attandance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Order of refusal by Registrar.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

Suit in case of order of refusal by Registrar.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72, or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents, presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. The fees payable under this Act are :—

Fees.

I.—For registration of documents :—

Documents.	Amount or value entered in the document	Fee payable. Rs. A. P.
1. Sale deeds and mortgage deeds ..	When it does not exceed Rs. 20	1 0 0
	„ exceeds Rs 20 but deos not exceed Rs. 30..	1 8 0
	„ „ 30 „ „ 40..	2 0 0
	„ „ 40 „ „ 50..	2 8 0
	„ „ 50 „ „ 60..	3 0 0
	„ „ 60 „ „ 70..	3 8 0
	„ „ 70 „ „ 80..	4 0 0
	„ „ 80 „ „ 90..	4 8 0
	„ „ 90 „ „ 100..	5 0 0
	„ „ 100 „ „ 1,000 on every Rs 100 or part thereof in excess of Rs.100.	3 0 0
	When it exceeds Rs. 1,000. for every Rs. 100 or part thereof in excess of Rs. 1,000	1 0 0
	[1][Provided that where the amount or value entered in a sale deed relating to immovable property exceeds Rs 5,000 but does not exceed Rs 10,000 double the fees herein above provided shall be chargeable and where such amount or value exceeds Rs 10,000 three times the fees herein above provided shall be chargeable.]	
2. Wills and authorities to adopt ..	..	4 0 0
3. Deeds of gift or of settlement ..	..	2 0 0
4. Deeds of partition Farkhati and partnership ..	..	4 0 0
5. Othere deeds ..	..	2 0 0

1. Proviso added *vide* Act III of 2004.

II. For searching the registers.	Rupees two for the register of each year.
III. For copy of a copy.	According to the rates prescribed in the copying rules.
IV. For the issue of a commission.	The amount fixed by the registering officer as proper.
V. For filing translation.	Eight annas.
VI. For attending private residences.	Rupees five, and if such residence is outside the limits of the head-quarter four annas per mile for travelling expenses.

[1]**79**. [2][The Government] may by notification in the Jammu and Kashmir Government Gazette remit or reduce the fees chargeable under section 78 with respect to any document or class of documents.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

OF PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

81. Every registering Officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the [3]Ranbir Dand Bidhi, to any person, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

82. Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ; or

1. Section 79 inserted *vide* Notification 20-L/86 published in Government Gazette dated 14th Chet 1986.
2. In section 79 " The Government " substituted for " His Highness " *vide* Act II of 1997.
3. Ranbir Penal Code.

(*b*) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ; or

(*c*) falsely personates another, and in such assumed character presents any document or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ; or

(*d*) abets anything made punishable by this act ;

shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or the Sub-Registrar, in whose territories, district or Sub-district, as the case may be, the offence has been committed.

Registering officers may commence prosecutions.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the [1]Ranbir Dand Bindhi.

Registeriug officers to be deemed publie servants

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section [2]175 of the Ranbir Dand Bidhi the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

PART XV.

MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

Destruction of unclaimed documents.

86. No registering officer shall be liable to any suit, claim or demand by reason of anythig in good faith done or refused in his official capacity.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

1. Ranbir Penal Code.
2. Section 229 of Ranbir Penal Code.

Nothing so done invalidated by defect in appointment or procedure.

87. Nothing done in good faith pursuant to this Act or the law of registration heretofore in force, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Registration of documents executed by Government officers or certain public functionaries.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for any official Trustee or Official Assignee, or for the Receiver or Registrar of the High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer of the Government, Official Trustee, Official Assignee, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Copies of certain orders, certificates and instruments to be sent to regis.-tering officers and file.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1.

(2) Omitted.

(3) Every officer granting a loan under the Agriculturists' Loans Act, shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order to the registering officer within the local limits of whose juridiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. I.

[1][(4) Every officer granting a loan to a craftsman, artisan or petty trader under authority of Cabinet Order No. 1547-C dated 15th December, 1953, shall send a copy of any instrument whereby immovable property is mortgaged for the

1. Sub-section (4) inserted *vide* Act VI of 1955.

purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. I.]

Exemptions from Act.

Exemption of certain documents executed by or in favour of Government.

90. (1) Nothing contained in this Act or the State Law of Registration heretofore in force shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely :—

(*a*) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settelement ; or

(*b*) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ; or

(*c*) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records ; or

(*d*) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

(*e*) Omitted.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

91. Subject to such rules and the previous payment of such fees as [1][the Government] prescribe in this behalf, all documents and maps mentioned in section 90, clauses (a), (b) and (c), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. Omitted.

93. Omitted.

1. See foot-note under section 3.

94. In case of loss of the original document, after its presentation to the Sub-Registrar but before completion of registration proceedings, the copy, taken from the Sub-Registrar's register, may, for purposes of registration be treated as original, and such copy when registered, shall have the effect, as the original document itself.

Loss of documents.

THE SUCCESSION (PROPERTY PROTECTION) ACT, 1977 (1920 A. D.).

Act No. XXXVI of 1977.

CONTENTS.

Preamble

SECTION.

1. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.
2. Agent etc may apply on behalf of minor etc.
3. Enquiry made by Judge.
4. Procedure. Determination of right. Appointment of officer to secure effects.
5. Appointment of curator pending determination of suit.
6. Powers conferrable on curator. Discretion to allow party in possession to continue.
7. Curator to give security and may receive rumneration; disposal of surplus. Curator may be invested with powers before security is taken.
8. Report from collecetor where estate includes revenue paying land.
9. Institution and defence of suits. Authority for collection of dues.

SECTION.

10. Allowances to apparent owners pending custody by curator.
11. Accounts to be filed by curator.
12. Inspection of accounts and right of interested party to keep duplicate. Penalty for default to account.
13. Bar to appointment of second curator for same property Curators of different parts. of property. Powers to appoint sole curator.
14. Limitation of time for application for curator.
15. Bar to enforcement of Act against public settlement or legal direction by deceased
16. Court of Wards to be made curator in case of minors having property subject to its jurisdiction.
17. Saving of right to bring regular suit.
18. Effect of decision of summary suit.
19 Omitted.
20. Omitted.

THE SUCCESSION (PROPERTY PROTECTION) ACT, 1977 (1920 A. D.)

Act No. XXXVI of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920, *and State Council Resoultion No.* 1, *dated* 8*th April*, 1925. (*Notification No.*14-*L*/81).]

An Act for the protection of movable and immovable property against wrongful possession in cases of successions.

WHEREAS much inconvenience has been experienced where persons have died possessed of movable and immovable propetry and the same has been taken upon pretended claims of right by gift or succession the difficulty of ascertaining the precise nature of the movable property in such cases the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted and the inability of heirs when out of possession to prosecute their rights affording strong temptations for the employment of force or fraud in order to obtain possession;

And WHEREAS from the above causes, the circumstance of actual possession, when taken upon a succession does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit;

AND WHEREAS such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all especially as regards movable property;

AND WHEREAS it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority, making the same, be beneficial under all the circumstances of the case;

AND WHEREAS it will be very inconvenient to interfere with succession to estates by the appiontment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by

or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit :—

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

1. It is hereby enacted that whenever a person dies leaving property, movable or immovable, it shall by lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

Agent, etc, may apply in behalf of minor, etc.

2. It shall be lawful for any agent, relative or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

Enquiry made by Judge.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially perjudiced if left to the ordinary remedy of a regular suit, and that the application is made *bona fide*.

Procedure.

Determination of right.

Appointment of officer to secure effects.

4. In case the Judge shall be staisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly : provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

Appointment of curator pending determination of suit.

5. In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappopriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to oppoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: provided always that, in the case of land, the Judge may delegate to the Collector, or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

Powers conferable on curator.

6. The Judge shall have power to authorise such curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: provided always that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession on giving sccurity or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

Discretion to allow party in possession to continue.

Curator to give security and may receive remuneration.

7. The Judge shall exact from the curator secuirty for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorise him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: provided always that, although security shall be required from the curator with all reasonable despatch and,

Disposal of surplus.

Curator may be invested with powers before security is taken.

where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Report from Collector where estate includes revenue paying land.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report and he shall not be obliged to act in conformity thereto ; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

Institution and defence of suits.

Authority for collection of dues.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate : provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents ; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Allowance to apparent owners pending custody by curator.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Accounts to be filed by curator.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed

account of his administration to the satisfaction of the Judge.

Inspection of accounts and right of interested party to keep duplicate.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested ; and it shall be comp tent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator ; and if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Penalty for default as to accounts.

Bar to appointment of second curator for same property.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district from appointing any other curator: provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment of another curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge: and provided further that, if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the High Court to make such order as it shall think fit for the appointment of one curator of the whole property.

Curators of different parts of property.

Power to appoint sole curator.

Limitation of time for application for curator.

14. This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

Bar to enforcement of Act against public settlement or legal directions by deceased.

15. This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such

directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the suit without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Saving of right to bring regular suit.

17. Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Effect of decision of summary suit.

18. The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

19. Omitted.

20. Omitted.

THE SPECIFIC RELIEF ACT, 1977, (1920 A. D)

Act No. XXXVII of 1977.

CONTENTS.

Preamble.

SECTION.

PART I.

PRELIMINARY.

1. Omitted.
2. Omitted.
3. Interpretation-clause.

Words defined in Contract Act.

4. Savings.
5. Specific relief how given.
6. Preventive relief.
7. Relief not granted to enforce penal law.

PART II.

OF SPECIEIC RFLIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) *Possession of Immovable Property.*

8. Recovery of specific immovable property.
9. Suit by person dispossessed of immovable property.

(b) *Possession of Movable Property.*

10. Rccovery of specific movable property.
11. Liability of person in possession not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) *Contracts which may be specifically enforced.*

12. Cases in which specific performance enforceable.
13. Contract of which the subject has partially ceased to exist.
14. Specific performance of part of contract where part unperformed is small.
15. Specific performance of part of contract where part unperformed is large.
16. Specific performance of independent part of contract.
17. Bar in other cases of specific performance of part of contract.
18. Purchaser's rights against vendor with imperfect title.
19. Power to award compensation in certain cases.
20. Liquidation of damages not a bar to specific performance.

SECTION.

(b) Contracts which cannot be specifically enforced.

21. Contracts not specifically enforceable.

(c) Of the discretion of the Court.

22. Discretion as to decreeing specific performance.

(d) For whom Contracts may be specifically enforced.

23. Who may obtain specific performance.

(e) For whom Contracts cannot be specifically enforced.

24. Personal bars to the relief.

25. Contracts to sell property by one who has no title, or who is a voluntary settler.

(f) For whom Contracts cannot be specifically enforced, except with a Variation.

26. Non-enforcement except with variation.

(g) Against whom Contracts may be specifically enforced.

27. Relief against parties and persons claiming under them by subsequent title.

(h) Against whom Contracts cannot be specifically enforced.

28. What parties cannot be compelled to perform.

(i) The effect of dismissing a Suit for Specific Performance.

29. Bar of suit for breach after dismissal,

SECTION.

(j) Awards and Directions to execute Settlements.

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When instrument may be rectified.

32. Presumption as to intent of parties.

33. Principles of rectification.

34. Specific enforcement of rectified contract.

CHAPTER IV.

OF THE RECISION OF CONTRACTS.

35. When recision may be adjudged.

36. Recision for mistake.

37. Alternative prayer for recision in suit for specific performance.

38. Court may require party rescinding to do equity.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. When cancellation may be ordered.

40. What instruments may be partially cancelled.

41. Power to require party for whom instrument is cancelled to make compensation.

SECTION.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Discretion of Court as to declaration of status or right.

Bar to such declaration.

43. Effect of declaration.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. Appointment of Receivers discretionary.

Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45 to 51. Omitted.

SECTION.

PART III,

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

52. Preventive relief how granted.

53. Temporary injunctions.

Perpetual injunctions.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Perpetual injunctions when granted.

55. Mandatory injunctions.

56. Injunction when refused.

57. Injunction to perform negative agreement.

THE SPECIFIC RELIEF ACT, 1977 (1920 A. D.)

Act No. XXXVIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81).]

An Act to define and amend the law relating to certain kinds of Specific Relief.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows :—

PART 1.

Preliminary.

[1] **1** and **2.** Omitted.

Interpretation-clause.

3. In this Act unless there be something repugnant in the subject or context,—

1. Short title, extent and commencement are given and regulated by Act IV of 1977.

"obligation" includes every duty enforceable by law:

"trust" includes every species of express, implied or constructive fiduciary ownership:

"trustee" includes every person holding, expressly, by implication, or constructively, a fiduciary character:

Illustrations.

(*a*) Z bequeaths land to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life". A accepts the bequest. A is a trustee, within the meaning of this Act, for B to the extent of the annuity.

(*b*) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(*f*) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest

"Settlement" means any instrument (other than a will or codicil as defined by the Probate and Administration Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Contract Act, shall be deemed to have the meanings respectively assigned to them by that Act.

Words defined in Contract Act.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

Savings.

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Registration Act on documents.

Specific relief how given.

5. Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a receiver.

Preventive relief.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.

Of Specific Relief.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(*a*) *Possession of Immovable Property.*

Recovery of specific immovable property.

8. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

Suit by person dispossessed of immovable property.

9. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Movable Property.

Recovery of specific movable property.

10. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the titledeeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Contract Act.

(*e*) A, a warehouse keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Liability of person in possession, not as owner, to delfver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the fo llowing cases :—

(*a*) when the thing claimed is held by the defendant

as the agent or trustee of the claimant ;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.—

of clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (*b*)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compllled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(*a*) *Contracts which may be specifically enforced.*

Cases in which specific performance enforceable.

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(*b*) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done ;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations.

of clause (*a*)—omitted.

of clause (*b*)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (*d*)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclon. B may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas ; or B may be directed, at suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance. or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But

the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) A contracts to sell to B a peice of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract ; but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(*b*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter has the following rights :—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(*c*) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interests and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations—

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse,

to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a licence necessary to the validity of the under-lease, and that, if the licence is not procured, A will pay B Rs. 10,000. A refuses to apply for the licence and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the licence.

(*b*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief ;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such,

that the Court cannot enforce specific performance of its material terms ;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty ;

(*d*) a contract which is in its nature revocable ;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust ;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the [1][Jammu and Kashmir Arbitration Act, 2002] no contract to refer present or future ditterences to arbitration shall be specifically enforced.

Illustrations—

to (*a*)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent, loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount :

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (*b*)—

A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work:

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular

1. Substituted *vide* Fourth Schedule to Act II of 2002 for "Code of Civil Procedure".

crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the court cannot superintend ;

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing room is handsomely decorated", even if it is held to have so much certainty that compensation can be recovered for its breach ;

A contracts to marry B :

The above contracts cannot be specifically enforced.

to (*c*)—

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (*d*)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might atonce dissolve the parternership.

to (*e*)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the share-holders.

They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when performed shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (*f*)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

to (*g*)—

A contracts to let for tewnty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (*h*)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(*c*) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal.

Discretion as to decreeing specific performance.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not , specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should trun out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within tewnty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts before the expiration of the twenty- five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific perfromance of the contract should be refused to B, unless he waves his claim to the unknown property.

(*h*) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) A, a lessee of mines contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(*j*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway.

Specific performance of the contract to execute the works should be decreed in favour of A.

(*d*) *For whom Contracts may be specifically enforced.*

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained, by—

Who may obtain specific performance.

(*a*) any party thereto ;

(*b*) the representative in interest, or the principal of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been preformed ;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man ;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant :

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of incorporation, the company.

(*e*) *For whom Contracts cannot be specifically enforced.*

24. Specific performance of a contract cannot he enforced in favour of a person—

Personal bar to the relief.

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(*d*) who previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations—

to clause (*a*)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (*b*)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, feils the tree. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (*c*)—

A contracts to let, and B contracts to take a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for and obtains, compensation for the breach. A, cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or, who is a voluntary settler.

25. A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific perfarmance of the written contract, except with the variation set up by B.

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent A pulls it down and erects a new house in its place : B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g*) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto ;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant ;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company:

provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (*b*)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B. may enforce specific preformance of the contract as against C.

A contracts to sell land to B for Rs. 5,000 B takes possession of the land. Afterwards A sells it to C for Rs, 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he maye nforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his land to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (*c*)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land his undivided moiety of which either may alien in his life-time, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(*h*) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff ;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would

become due under the contract, or by any promise of such party which has not been substantially fulfilled ;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise : provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (*c*)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(*i*) *The effect of dismissing a suit for Specific Performance.*

Bar of suit for breach after dismissal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(*j*) *Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary direction to execute settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified ; and if the

Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C be rectified so as to exclude from it the godown given to C ; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Presumption as to intent of parties.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

Principles of rectification.

34. A contract in writing may be first rectified and then if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Specific enforcement of rectified contract.

Illustration.

A contracts in writing to pay his attorney B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client which if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV,

OF THE RESCISSION OF CONTRACTS.

When rescission may be adjudged.

35. Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff ;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchese-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations—

to (*a*)—

A sells a field to B. There is a right of way over the field of which a has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (*b*)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36. Rescission of a contract cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that if the contract cannot be specifically enforced, it may be

rescinded and delivered up to be cancelled ; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When canellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable ; and the Court may, in its discretion, so adjudged it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered ; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October, 1876 and procures the lease to be registered under the Registration Act. B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What insruments may be partially cancelled.

40. Where an instrument is evidence of different right, or different obligations, the Court may in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

EXPLANATION.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children". No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interest of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declatration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B dies without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this Chapter is bindingonly on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Effect of declaration.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court,

Appointment of receivers discretionary.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES

45 to **51** Omitted.

PART III.

Of Preventive Relief.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of jucidial proceedings.

EXPLANATION.—For the purpose of this section a trade-mark is property.

Illustrations.

(*a*) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust property. B may use for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sur an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwardst lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable land to B for purposes of husbandry but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the land in contravention of his implied contract to use them in a husband-like manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking a dissolution of the partnership, sue for an injuction to restrain A from doing the act.

(*m*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injuction to restrain her.

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destory part of the family-house and to sell some of the family-utensils. B and C may sue for an injuction to restrain him.

(*o*) A, the owner of certain houses in Srinagar, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injuction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sue A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(*q*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injuction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B, B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*) A improperly uses the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade-mark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manucfatory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B, as patient, to A, as medica adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the [1]Ranbir Dand Bidhi. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(*f*) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54 and in illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Government of India or [2][the Government of a State within the Indian Union excluding the Jammu and Kashmir State] or the State, or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract, the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be

1. Ranbir Penal Code.
2. Substituted *vide* A. L. O. 2008 for "the Local Government of a Province of British India".

obtained by any other usual mode of proceeding except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such to as disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner, B from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as patent "plumbago crucibles," though infact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm" stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to preform the negative agreement: provided that the applicant has not failed to perfom the contract so far as it is binding on him.

Injunction to perform negative agreement.

Illustrations.

(*a*) A contracts to sell to B for Rs. 1,000 the good will of a certain business unconnected with business premises, and further agrees not to carry on that business in Srinagar. B pays A the Rs. 1,000 but A carries on the business in Srinagar. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Srinagar.

(*b*) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that in consideration of Rs. 1,000 to be paid to him by B on a day fixed he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

THE SUITS VALUATION ACT, 1977 (1920 A. D.)

Act No XXXVIII of 1977.

CONTENTS.

Preamble.

SECTION.

1. Omitted.

PART I.

SUITS RELATING TO LAND.

2. Omitted.

3. Power for High Court to make rules determining value of land for jurisdictional purposes.

4. Valuation of relief in certain suits relating to land not to exceed the value of the land.

5. Enforcement of rules.

6. Omitted.

PART II.

OTHER SUITS.

7. Omitted.

SECTION.

8. Court-fee value and jurisdictional value to be the same in certain suits.

9. Determination of value of certain suits by High Court.

10. Omitted.

PART III.

SUPPLEMENTAL PROVISIONS.

11. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

12. Omitted.

THE SUITS VALUATION ACT, 1977 (1920 A. D.)

Act No. XXXVIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81).]

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; it is hereby enacted as follows:—

[1]**1.** Omitted.

PATR I

SUITS RELATING TO LAND

2. Omitted.

Power for High Court to make rules determining value of land for jurisdictional purposes.

3. (1) The High Court may, with the previous sanction of [2][the Government], make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, section 7, paragraphs v and vi, and paragraph x, clause (*d*).

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

4. Where a suit mentioned in the Court-fees Act, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

1. **Short title, extent and commencement are given and regulated by Act IV of 1977.**

2. **Substituted for "His Highness"** *vide* **Act X of 1996.**

Enforcement of rules

5. (1) Omitted.

(2) A rule under section 3 shall not take effect till the expiration of one month after the rule has been published in the Jammu and Kashmir Government Gazette.

6. Omitted.

PART II.

OTHER SUITS

7. Omitted.

Court-fee value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court-fees Act, section 7, paragraphs v, vi and ix, and paragraph x clause (*d*), court-fees are payable *ad valorem* under the Court-fees Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

Determination of value of certain suits by High Court,

9. When the subject matter of suits of any class, other than suits mentioned in the Court-fees Act, section 7, paragraphs v and vi and paragraph x, clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of [1][the Government], direct that suits of that class shall, for the purposes of the Court-fees Act, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

10. Omitted.

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

11. (1) Notwithstanding anything in section 99 of the Code of Civil Procedure, an objection that by reason of the over-valuation or undervaluation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the

1. Substituted for the words "His Highness" *vide* Act X of 1996.

suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless--

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was overvalued or under-valued, and that the over-valuation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 115 of the Code of Civil Procedure or other enactment for the time being in force.

12. Omitted.

THE SUCCESSION CERTIFICATE ACT, 1977 (1920 A. D.)

Act No. XXXIX of 1977.

CONTENTS.

SECTION.

1. Omitted.
2. Omitted.
3. Definitions.
4. Proof of representative title a condition precedent to recovery through the Court of debts from debtors of deceased persons.
5. Court having jurisdiction to grant certificate.
6. Application for certificate.
7. Procedure on application.
8. Contents of certificate.
9. Requisition of security from grantee of certificate.
10. Extension of certificate.
11. Forms of certificate and extended certificates.
12. Amendment of certificate in respect of powers as to securities.
13. Omitted.
14. Mode of collecting court-fees on certificates
15. Local extent of certificate.
16. Effect of certificate.
17. Effect of certificate granted or extended by a court outside the State.
18. Revocation of certificate.
19. Appeal.
20. Effect on certificate of previous certificate, probate or letters of administration.
21. Effect on certificate of subsequent probate or letters of administration.
22. Validation of certain payments made in good faith to holder of invalid certificate.
23. Prohibition of exercise of certain powers by curators.
24. Omitted.
25. Effect of decisions under this Act, and liability of holder of certificate thereunder.
26. Investiture of inferior Courts with jurisdiction of District Court for this Act.
27. Surrender of superseded and invalid certificate.
28. Omitted.

THE FIRST SCHEDULE—Omitted.

THE SECOND SCHEDULE—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

THE SUCCESSION CERTIFICATE ACT, 1977 (1920 A. D.)

Act No. XXXIX of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Gouncil Resolution No.* 1, *dated* 8*th April* 1925, (*Notification No.* 14-*L*/81).]

An Act to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collections of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:—

[1]**1.** Omitted

2. Omitted.

Definitions,

3. In this Act unless there is something repugnant in the subject or context,—

(1) "District Court", subject to the other provisions of this Act and of any other enactment for the time being in force, means a Court presided over by a District Judge: and

(2) "Security" means—

(*a*) any promissory note, debenture, stock or other security of the Government of India;

(b) any bond, debenture, or annuity charged by the [2][Act of Parliament of the United Kingdom] on the revenues of India;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution;

(*d*) any debenture or other security for money issued by, or on behalf of a local authority;

(*e*) any other security which [3][the Government] may, by notification in the Government Gazette, declare to be a security for purposes of this Act.

4. (1) No Court shall—

Proof of representative title a condition precedent to recovery through the Court of debts from debtors of deceased persons.

1. Short title, extent and commencement are given and regulated by Act IV of 1977
2. Substituted *vide* A. L. O. 2008 for "Imperial Parliament."
3. Substituted for "His Highness" *vide* Act X of 1996.

(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(*i*) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(*ii*) a certificate granted under this Act or the Succession Certificate Regulation of 1896 and having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Court having jurisdiction to grant certificate.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Application for certificate.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely:—

(*a*) the time of the death of the deceased;

(*b*) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;

(*c*) the family or other near relatives of the deceased and their respective residences;

(*d*) the right in which the petitioner claims;

(*e*) the absence of any impediment under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(*f*) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment accord-

ing to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

[1][(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

Porcedure on application

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(*a*) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(*b*) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certiifcate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

Contents of certificate.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

(*a*) to receive interest or dividends on, or

(*b*) to negotiate or transfer, or

(*c*) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

1. Clause (3) to section 6 inserted *vide* Act X of 1989.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

Requisition of security from grantee of certificate.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may, from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

Extension of certificate,

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

Forms of certificate and extended certificate.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or trans-

Amendment of certificate in respect of powers as to securities.

fer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

13. Omitted.

Mode of collecting court-fees on certificates.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent of certificate.

15. A certificate under this Act shall have effect throughout the whole of the State.

Effect of certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith, in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate granted or extended by a Court outside the State.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted by a Court outside the State or where a certificate so granted has been extended in such form by such Court, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, with respect to certificates under this Act, have the same effect in the State as a certificate granted or extended under this Act.

Revocation of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely :—

(*a*) that the proceedings to obtain the certificate were defective in substance;

(*b*) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(*c*) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(*d*) that the certificate has become useles and inoperative through circumstances;

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Orders 46 and 47 and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, an order of a District Court under this Act shall be final.

Effect on certificate of previous certificate, probate or letters of administration.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Effect on certificate of subsequent probate or letters of administration.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

Validation of certain payments made in good faith to holder of the invalid certificate.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Prohibition of exercise of certain powers by curators.

23. (1) Where a certificate has been granted under this Act or the Succession Certificate Regulation of 1896, or a grant of probate or letters of administration has been made, a curator appointed under the Succession (Property Protection) Act shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

24. Omitted.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security to account therefor to the person lawfully entitled thereto,

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

26. [1](1) [The Government] may, by notification in the Government Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) an order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Orders XLVI and XLVII and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court, and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

Surrender of superseded and invalid certificate.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may ex-

1. Substituted for "His Highness" *vide* Act X of 1996.

tend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Omitted.

THE FIRST SCHEDULE—Omitted.

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(*See section* 11).

In the Court of

To A. E.

Whereas you applied on the day of for a certificate under the Succession Certificate Act, in respect of the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities

Serial number.	DESCRIPTION.			Market-vlaue of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [AND] [TO RECEIVE] [INTEREST][DIVIDENDS][ON] [TO NEGOTIATE] [TO TRANSFER] [THOSE SECURITIES].

Dated this day of .

DISTRICT JUDGE.

In the Court of

On the application of A. B. made to me on the day of , I hereby extend this certificate to the following debts and securities, namely :——

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities

Serial number.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distingushing number or letter of security.	Name, title or class of security.	Amount of par value of security.	

This extension empowers A. B. to collect those debts [AND] [TO RECEIVE] [INTEREST] [DIVIDENDS] [ON] [TO NEGOTIATE][TO TRANSFER] [THOSE SECURITIES].

Dated this day .

DISTRICT JUDGE

THE STAMP ACT, 1977 (1920 A. D.)

Act No. XL of 1977.

CONTENTS

SECTION.

CHAPTER I.

PRELIMINARY.

1. Name, extent, enforcement.
2. Definitions.

CHAPTER II.

STAMP DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Instruments chargeable with duty.
4. Several instruments used in single transaction of sale, mortgage or settlement.
4-A. Stamps duty on lease where agreement to execute it bears the stamp duty prescribed for the lease.
5. Instruments relating to several distinct matters.
6. Instruments coming within several descriptions in Schedule I.
7. Omitted.
8. Omitted.
9. Power to reduce, remit or compound duties.

SECTION.

B.—Of Stamps and the mode of using them.

10. Duties how to be paid.
11. Use of adhesive stamps.
12. Cancellation of adhesive stamps.
13. Instruments stamped with impressed stamps how to be written.
14. Only one instrument to be on same stamp.
15. Instrument written contrary to section 13 or 14 deemed unstamped.
16. Denoting duty.

C.—Of the time of stamping Instruments.

17. Instruments executed in the State.
18. Instruments other than bills and notes executed out of the State.
19. Bills and notes drawn out of the State.

D.—Of Valuations for Duty.

20. Conversion of amount expressed in foreign currencies.
21. Stock and marketable securities how to be valued.

SECTION.

22. Effect of statement of rate of exchange or average price.

23. Instruments reserving interest.

23-A. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

24. How transfer in consideration of debt, or subject to future payment, etc., to be charged.

25. Valuation in case of annuity, etc.

26. Stamp where value of subject-matter is indeterminate.

27. Facts affecting duty to be set forth in instrument.

28. Direction as to duty in case of certain conveyances.

E.—Duty by whom payable.

29. Duties by whom payable.

30. Obligation to give receipt in certain cases.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. Adjudication as to proper stamp.

32. Certificate by Collector.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. Examination and impounding of instruments.

SECTION.

34. Special provision as to unstamped receipts.

35. Instruments not duly stamped inadmissible in evidence, etc.

36. Admission of instrument where not to be questioned.

37. Admission of improperly stamped instruments.

38. Instruments impounded how dealt with.

39. Collector's power to refund penalty paid under section 38, sub-section (1).

40. Collector's power to stamp instruments impounded.

41. Instruments unduly stamped by accident.

42. Endorsement of instruments on which duty has been paid under section 35, 40 or 41.

43. Prosecution for offence against Stamp-law.

44. Persons paying duty or penalty may recover same in certain cases.

45. Power to Government to refund penalty or excess duty in certain cases.

46. Non-liability for loss of instruments sent under section 38.

47. Power of payer to stamp bills and promissory notes received by him unstamped

48. Recovery of duties and penalties.

SECTION.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

49. Allowance for spoiled stamps.

50. Application for relief under section 49 when to be made.

51. Allowance in case of printed forms no longer required by corporations.

52. Allowance for misused stamps.

53. Allowance for spoiled or misused stamps how to be made.

54. Allowance for stamps not required for use.

55. Allowance on renewal of certain debentures.

———

CHAPTER VI.

REFERENCE AND REVISION.

56. Control of Government and statement of case to the Revenue Minister.

57. Statement of case by Revenue Minister to the High Court.

58. Power of High Court to call for further particulars as to case stated.

59. Procedure in disposing of case stated.

60. Statement of case by other Courts to High Court.

61. Revision of certain decisions of Courts regarding the sufficiency of stamps.

———

SECTION.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

62. Penalty for executing, etc., instrument not duly stamped.

63. Penalty for failure to cancel adhesive stamp.

64. Penalty for omission to comply with provisions of section 27.

65. Penalty for refusal to give receipt, and for devices to evade duty on receipts.

66. Penalty for not making out policy, or making one not duly stamped.

67. Penalty for not drawing full number of bills or marine policies purporting to be in sets.

68. Penalty for post-dating bills, and for other devices to defraud the revenue.

69. Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

70. Institution and conduct of prosecutions.

71. Jurisdiction of Magistrates.

72. Place of trial.

———

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. Books, etc., to be open to inspection.

74. Powers to make rules relating to sale of stamps.

SECTION.

75. Power to make rules generally to carry out Act.

76. Publication of rules.

76-A. Delegation of powers.

77. Saving as to court-fees.

SECTION.

78. Act to be translated and sold cheaply.

79. Omitted.

SCHEDULE I.—STAMP-DUTY ON INSTRUMENTS.

SCHEDULE II.—OMITTED.

THE STAMP ACT, 1977 (1920 A. D.)

ACT No. XL of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September* 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification* 14-*L*/81).]

An Act to consolidate and amend the Law relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to stamps; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

[1][**1.** (*i*) This Act may be called the Stamp Act, 1977.
(*ii*) It extends to the whole of Jammu and Kashmir State. It shall come into force on the Ist day of Baisakh 1977.]

"Definitions."

2. In this Act, unless there is something repugnant in the subject or context,—

Banker.

(1) "banker" includes a bank and any person acting as a banker:

"Bill of exchange."

(2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other

1. Section 1 was revived by Act XI of 1993.

person for, any sum of money :

"Bill of exchange payable on demand."

(3) "bill of exchange payable on demand" includes

(*a*) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(*b*) an order for the payment of any sum of money weekly, monthly or at any other stated periods; and

(*c*) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

(4) Omitted.

"Bond"

(5) "bond" includes—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable."

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed:

"Cheque."

(7) "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand:

(8) Omitted.

"Collector."

[1][(9) "Collector" means the Deputy Commissioner of a District]:

1. Clause 9 substituted *vide* Act III of 2008 (For earlier amendment see Act VII of 1994.)

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I:

"Conveyance".

(11) "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the State:

"Duly stamped".

(12) "executed" and "execution", used with reference to instruments, means "signed" and "signature.":

"Executed and execution."

"Impressed stamped." (13) "impressed stamp" includes

(*a*) labels affixed and impressed by the proper officer, and

(*b*) stamps embossed or engraved on stamped paper:

(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

"Instrument".

(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition:

"Instrument of partition.

(16) "lease" means a lease of immovable property, and includes also—

"Lease".

(*a*) *a patta*;

(*b*) a *kabuliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immovable property;

(*c*) any instrument by which tolls of any description are let;

(*d*) any writing on an application for a lease intended to signify that the application is granted;

(16-A) "marketable security" means a security of such a description as to be capable of being sold in any stock market in 1[India] or the State or in the United kingdom:

"Marketable security".

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property:

"Mortgage deed".

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written:

"Paper".

"Policy of insurance.". (19) "policy of insurance" includes—

(*a*) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

(*b*) a life-policy, and any policy insuring any person against accident or sickness, and any other personal insurance;

(20) Omitted.

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it:

"Power of attorney".

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act; it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

"Promissory note".

(23) "receipt" includes any note, memorandom or writing—

"Receipt".

(*a*) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(*b*) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

1. Substituted *vide* A. L. O. 2008 for "British India".

(*c*) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(*d*) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person: and

(24) "settlement" means any non-testamentary disposition, in writing, of movable or immovable property made— "Settlement."

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(*c*) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

CHAPTER II.

STAMP DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule 1, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor respectively, that is to say— Instruments chargeable with duty.

(*a*) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in the State on or after the date on which this Act comes into force ;

(*b*) every bill of exchange [1][*] [2][payable otherwise than on demand] or promissory note drawn or made out of the State on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in the State ; and

(*c*) every instrument (other than a bill of exchange, [1][*] or promissory note) mentioned in that schedule, which,

1. The word "cheque" omitted *vide* Act XI of 1993.
2. Inserted *vide* Act XI of 1993.

not having been previously executed by any person, is executed out of the State on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the State and is received in the State :

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument ;

(2) Omitted.

Several instruments used in single transaction of sale, mortgage or settlement.

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transection, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of '[two rupees] instead of the duty (if any) prescribed for it in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument :

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

Stamp duty on lease where agreement to execute it bears the stamp duty prescribed for the lease.

4-A. Where in respect of an agreement to execute a lease or sub-lease, stamp duty has been paid of an amount which is not less than the amount of stamp duty prescribed in Schedule I for the lease or sub-lease, a lease or sub-lease executed in pursuance of the agreement shall be chargeable with a duty not exceeding [2][one rupee] instead of the duty, if any, prescribed for it in that schedule.

Instruments relatting to several distinct matters.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

1. Substituted *vide* Act II of 1956 for "one rupee and eight annas",
2. Substituted *vide* Notifi: 11-L/86 for "eight annas".

Instruments coming within several descriptions in Schedule I.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions [1][given] in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Provided that nothing in this Act contained shall render chargeable with duty exceeding [2][two rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect ot which the proper duty has been paid.

7. Omitted.

8. Omitted.

Power to reduce, remit or compound duties.

9. [3][The Government] may, by rule or order published in the Government Gazette,—

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

B.—Of Stamps and the mode of using them.

Duties how to be paid.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means only of stamps—

(*a*) according to the provisions herein contained ; or

(*b*) when no such provision is applicable thereto-as [3][the Government] may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(*a*) in the case of each kind of instrument—the description of stamps which may be used ;

1. Inserted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.
2. Substituted *vide* Act II of 1956 for "one rupee and eight annas".
3. In sections 9, 10, 16, 18, 26, 33 (3), 37, 49, 55, 70 (1), 75, 76-A and 78 for the words "His Highness" the words "the Government" substituted *vide* Act X of 1996.

(*b*) in the case of instruments stamped with impressed stamps—the number of stamps which may be used ;

(*c*) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

Use of adhesive stamps.

11. The following instruments may be stamped with adhesive stamps, namely:—

(*a*) instruments chargeable with the duty of one anna or half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;

(*b*) bills of exchange [1][*] and promissory notes drawn or made out of the State ;

(*c*) entry as an advocate or pleader on the roll of the High Court ;

(*d*) notarial acts ; and

(*e*) transfers by endorsement of shares in any incorporated company or other body corporate.

Cancellation of adhesive stamps.

12. (1) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and

(*b*) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his form with the true date of his so writing, or in any other effectual manner.

Instruments stamped with impressed stamps how to be written.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Where a stamp duty payable in respect of an instrument is made of two or more papers stamped with impressed stamp, the instrument shall be written in such manner that some

1. Word "cheques" omitted by Act XI of 1993".

part of the writing shall, as far as possible, appear on each such paper so as to leave as few blank sheets as possible. Each blank sheet shall be dated and signed and shown as part of the instrument.

Only one instrument to be on same stamp.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 13 or 14 deemed unstamped.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Denoting duty.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as [1][the Government] may by rule prescribe.

C.—Of the time of Stamping Instruments.

Instruments executed in the State.

17. All instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution.

Instruments other than bills and notes executed out of the State.

18. (1) Every instrument chargeable with duty executed only out of the State, and not being a bill of exchange [2][*] or promissory note, may be stamped within three months after it has been first received in the State.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped

1. See footnote under section 9.
2. Word "cheque" omitted by Act XI of 1993.

by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as [1][the Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Bills and notes drawn out of the State.

19. The first holder in the State of any bill of exchange [2][*] [3][payable otherwise than on demand] or promissory note drawn or made out of the State shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in the State, affix thereto the proper stamp and cancel the same :

Provided that,—

(*a*) if, at the time any such bill of exchange [2][*] or note comes into the hands of any holder thereof in the State, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled :

(*b*) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of valuations for Duty.

[4][**20.** When an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of [5][India,] such duty shall be calculated on the value of such money in the currency of [5][India] according to the rate of exchange prevailing in India on the day of the date of the instrument under a Notification of the Governor-General in Council issued under sub-section (2) of section 20 of Act II of 1899].

Stock and marketable securities how to be valued.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

1. See footnote under section 9.
2. See footnote under section 18 (1).
3. Inserted *vide* Act XI of 1993
4. Section 20 inserted by Act VII of 1994.
5. Substituted *vide* A.L.O. 2008 for "British India".

Effect of statement of rate of exchange or average price.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Instruments reserving interest.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

23-A. (I) Where an instrument (not being a promissory note or bill of exchange)—

(*a*) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(*b*) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5(c) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

How transfer in consideration of debt, or subject to future payment, etc. to be charged.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valarem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

EXPLANATION.—In the case of a sale of property subject to a mortgage or ther incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration

for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs,1,700,

(3) A mortgages a house of the value of Rs. 10 000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

Valuation in case of annuity, etc.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained —such total amount ;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of ten years calculated from the date on which the first payment becomes due; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of ten years calculated from the date on which the first payment becomes due.

Stamp where value of subject-matter is indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the

highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(*a*) when the lease has been granted by or on behalf of [1][the Government], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to [1][the Government] under the lease, or,

(*b*) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

Facts affecting duty to be set forth in instrument.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Direction as to duty in case of certain conveyances.

28. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall

1. See footnote under section 9.

be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valroem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

F.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(*a*) in the case of any instrument described in any of the following Articles of Schedule I, namely :—

No. 2. (Administration Bond),

No. 6. (Agreement realating to Deposit of Title-deeds. Pawn or Pledge),

No. 13. (Bill of Exchange),

No. 15. (Bond),
No. 26. (Customs Bond),
No. 27. (Debenture),
No. 32. (Further Charge),
No. 34. (Indemnity-Bond),
No. 40. (Mortgage-Deed),
No. 49. (Promissory-Note),
No. 55. (Release),
No. 57. (Security-Bond or Mortgage-Deed),
No. 58. (Settlement),
No. 62. (*i*) (Transfer of shares in an incorporated company or other body corporate),
No. 62 (*b*). (Transfer of Debentures, being marketable securities, whether the debenture is liable to duty or not),
No. 62 (*c*). (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

by the person drawing, making or executing such instrument :

(*b*) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance :

(*bb*) in the case of a policy of fire-insurance—by the person issuing the policy:

(*c*) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of exchange—by the parties in equal shares:

(*f*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates: and,

(*g*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

Obligation to give receipt in certain cases.

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person

paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp.

31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

(*a*) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(*b*) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector.

32. (1) When an instrument brought to the Collector under section 31, is, in his opinion, one of a description chargeable with duty, and—

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be ; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse—

(*a*) any instrument executed or first executed in the State and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be; or

(*b*) any instrument executed or first executed out of the State and brought to him after the expiration of three months after it has been first received in the State.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33 (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same,

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed:

Provided that —

(*a*) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure;

(*b*) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, [1][the Government] may determine what offices should be public offices and who shall be deemed to be persons in charge of such public offices.

Special provision as to unstamped receipts.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

Instruments not duly stamped inadmissible in evidence, etc.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duty stamped :

Provided that—

[2][(*a*) any such instrument not being instrument chargeable with a duty of one anna or a bill of exchange or promissory note, [3][or acknowledgement] shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of five rupees, or ten times the

1. See footnote under section 9.
2. Proviso (*a*) substituted by Act No. VII of 1994.
3. Inserted *vide* Act II of 1956.

amount of the proper duty or if deficient portion thereof exceeds five rupees, of a sum equal to ten times, such duty or portion ;

The deficiency in duty and penalty payable under this section shall be realised in revenue stamps];

(*b*) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;

(*c*) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(*d*) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure;

(*e*) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Admission of instrument where not to be questioned.

36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of improperly stamped instruments.

37. [1][The Government] may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Instruments impounded how dealt with.

38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37,he shall send to the Collector an authenticated copy of such instrument, together with a certificate in

1. See footnote section 9.

writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

Collector's power to refund penalty paid under section 38, sub-section (1).

39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Collector's power to stamp instruments impounded.

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, [1][or acknowledgement,] he shall adopt the following procedure :—

(*a*) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

[2][(*b*) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he think fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:]

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1), shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he

1. Inserted *vide* Act II of 1956.
2. Clause (b) substituted by Act No. VII of 1994.

has dealt with it as provided by this section, return it to the impounding officer,

Instruments unduly stamped by accident.

41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, [1][or acknowledgement], is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

Endorsement of instruments on which duty has been paid under section 35, 40, or 41.

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40, or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on this application in his behalf to the person from

1. Inserted *vide* Act II of 1956.

whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(*a*) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(*b*) nothing in this section shall effect the Code of Civil Procedure, Order XIII, rule 9.

Prosecution for offence against Stamp-law.

43. The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Persons paying duty or penalty may recover same in certain cases.

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

Power to Government to refund penalty or excess duty in certain cases.

45. (1) Where any penalty is paid under section 35 or section 40, [1][the Government], may upon application in writing made within one year from the date of the payment, refund such panalty wholly or in part.

(2) Where, in the opinion of [1][the Government], stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, it may, upon application in writing made within three months of the order charging the same, refund the excess.

Non-liability for loss of instraments under section 38.

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Power of payer to stamp bills and promissory notes received by him unstamped.

47. When any bill of exchange [2][or] promissory note [2][*] chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill [2][or] note, [2][*] and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, [2][or] note [2][*] shall, so far as respects the duty, be deemed good and valid:

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill [2][or] note [2][*].

Recovery of duties and penalties.

48. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time

1. Substituted for "Revenue Minister" *vide* Act X of 1996.
2. "cheque,, "or cheque" omitted and words in brackets inserted by Act XI of 1993

being in force for the recovery of arrears of land revenue.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

Allowance for spoiled stamps.

49. Subject to such rules as may be made by [1][the Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for stamps spoiled in the cases hereinafter mentioned, namely:—

(*a*) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(*b*) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(*c*) in the case of bills of exchange [2][*][3][payable otherwise than on demand] or promissory notes—

(1) the stamp on any [2][such] bill of exchange [2][*] signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance : provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange [2][*] to be afterwards written thereon :

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands :

(3) the stamp used or intended to be used for any [2][such] bill of exchange [2][*] or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange [2][*],may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to

1. See footnote under section 9.

2. "Cheque" or "or cheque', omitted and words in brackets inserted by Act XI of 1993.

the payee : provided that another completed and duly stamped bill of exchange [1][*] or promissory note is produced identical in every particular, except in the correction of such ommission or error as aforesaid, with the spoiled bill [1][*] or note:

(*d*) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found, to be absolutely void in law from the beginning:

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some meterial party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value :

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

1. "Cheque" or "or cheque" omitted by Act XI of 1997.

EXPLANATION.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp wtihin the meaning of this section.

Application for relief under section 49 when to be made.

50. The application for relief under section 49 shall be made within the following periods, that is to say,—

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument:

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled:

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,—

(*a*) when the spoiled instrument has been for sufficient reasons sent out of the State, the application may be made within six months after it has been received back in the State:

(*b*) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

Allowance in case of printed forms no longer required by corporations.

51. The Revenue Minister or the Collector if empowered by the Revenue Minister in this behalf may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate : provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

Allowance for misused stamps.

52. (*a*) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has

inadvertently used any stamp for an instrument not chargeable with any duty; or

(*b*) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

(*a*) other stamps of the same description and value; or,

(*b*) if required and he thinks fit, stamps of any other description to the same amount in value; or,

(*c*) at his discretion, the same value in money, deducting [1][two annas] for each rupee or fraction of a rupee.

Allowance for stamps not required for use.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [1][two annas] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

(*a*) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and

(*b*) that he has paid the full price thereof; and

(*c*) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

1. Substituted for "one anna" by Act XX of 1989—Notification No. 38-L/89 published in the Government Gazette deted 8th Poh 1989.

Allowance on renewal of certain debentures.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as [1][the Government] may direct.

EXPLANATION.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:—

(*a*) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;

(*b*) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;

(*c*) the substitution of the name of the holder at the time of renewal for the name of the original holders; and

(*d*) the alteration of the rate of interest or the dates of payment thereof.

CHAPTER VI.

REFERENCE AND REVISION

Control of Government and statement of case to Revenue Minister.

56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the [2][Government].

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargerble, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Revenue Minister.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

Statement of case by Revenue Minister to High Court.

57. The Revenue Minister may state any case referred to him under section 56, sub-section (2), or otherwise coming to his notice, and refer such case, with his own opinion thereon, to the High Court.

1. See footnote under section 9.
2. Substituted for "Revenue Minister" in section 56 (1) *vide* Act X of 1996

Power of High Court to call for further particulars as to case stated.

58. If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Procedure in disposing of case stated.

59. (1) The High Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Statement of case by other Courts to High Court.

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (*a*) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court to which, if he were the Revenue Minister, he would, under section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Revenue Minister and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, makes any order admitting any instrument in evidence as sdulytamped or as not requiring a stamo or pon payment of

duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) if such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under subsection (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(*a*) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(*b*) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

(5) Any other order made by a Court under the provisions of this Act shall be appealable in the ordinary way.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, etc., instrument not duly stamped.

62. (1) Any Person—

(*a*) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange [1][*] [1][payable otherwise than on demand] or promissory note without the same being duly stamped ; or

(*b*) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(*c*) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to one hundred rupees or ten times the amount of the deficiency where this exceeds one hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Illustrations.

(1) If a Hundi which ought to have been executed on a two annas stamp paper is executed on a one anna stamp paper, the fine may extend to rupees one hundred.

(2) If a conveyance which ought to have been executed on a stamped paper of Rs. 500, is executed on a stamped paper of Rs. 300 the fine may extend to Rs. 2,000.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to cancel adhesive stamp.

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rnpees.

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government ,—

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth ; or

1. "Cheque" omitted and words in brackets inserted by Act XI of 1993.

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(*c*) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

65. Any person who,—

(*a*) being required under section 30 to give a receipt, refuses or neglects to give the same; or

(*b*) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered;

shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy, or making one not duly stamped.

66. Any person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy;

shall be punishable with fine which may extend to two hundred rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Any person drawing or executing a bill of exchange [1][payable otherwise than on demand] or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be puuishable with fine which may extend to one thousand rupees.

1. Inserted by Act XI of 1993,

Penalty for postdating bills, and for other devices to defraud the revenue.

68. Any person who—

(*a*) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or

(*b*) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ; or,

(*c*) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. (*a*) Any person appointed to sell stamps who disobeys any rule made under section 74; and

(*b*) any person not so appointed who sells or offers for sale any stamp (other than a one-anna or half an anna adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Institution and conduct of prosecutions.

70. (1) No prosecution in respect of any offence punishable under this Act or the law relating to stamps heretofore in force shall be instituted without the sanction of the Collector or such other officer as [1][the Government] generally, or the Collector specially, authorises in that behalf.

(2) The [2][Government] or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

Jurisdiction of Magistrates.

71. No Magistrate other than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

1. See footnote under section 9.
2. Substituted for "Revenue Minister" in section 70(2) *vide* Act X of 1996.

72. Every such offence committed in respect of any instrument may be tried in any district in which such instrument is found as well as in any district in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

Place of trial.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

Books, etc., to be open to inspection.

74. (1) The Government shall appoint stamp vendors in every district and town.

(2) Every person wishing to sell stamps shall apply for a licence for that purpose. The stamp duty payable on such application shall be five rupees and no licence shall be in force for more than one year.

(3) The Government shall give a commission [1][at the sanctioned rates for the time being in force] on the face value of stamps to stamp vendors.

(4) The Government shall from time to time make rules and directions for the guidance of stamp vendors.

(5) No stamp vendor shall demand from a buyer more than the face value of the stamp sought to be bought.

[2](6) Omitted.

75. [3][The Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

Power to make rules generally to carry out Act.

76. (1) All rules made under this Act shall be published in the Government Gazette.

Publication of rules.

1. Substituted for the words "five per centum" by Notification No. 1-C(1980) dated 8th June 1923, published in the Government Gazette dated 26th Har, 1980 and the amendment to take effect from the date of commencement of the Stamp Act.

2. Omitted by Notification No. 10-L/1982 published in the Government Gazette dated 9th Maghar, 1982.

3. See footnote under section 9.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

76-A. [1][The Government] may by notification in the Government Gazette delegate [2][all or any of the powers vested in it under sections 33 (3), 45 (1) and (2), 56 (1), 70 (1) and (2), 74 and 78 to such officer or authority as may be specified in the notification.]

Saving as to court-fees.

77. Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

Act to be translated and sold cheaply.

78. [1][The Government] shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

79. Omitted.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(*See section* 3.)

Description of Instrument	Proper Stamp-duty
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	[3][Two annas].
2. ADMINISTRATION-BOND, including a bond given under section 78 of the Probate and	

1. See footnote under section 9.
2. In section 76-A words and figures etc. at the end within brackets are substituted for clauses (a) and (b) after deletion of colon and dash *vide* Act X of 1996.
3. Substituted *vide* Act II of 1956 for "one anna".

Description of Instrument	Proper Stamp-duty
Administration Act, or section 9 or section 10 of the Succession Certificate Act,—	
(*a*) where the amount does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.
(*b*) in any other case	[1][Ten rupees].
3. ADOPTION-DEED, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	[1][Twenty rupees].
ADVOCATE. *See* Entry as an Advocate (No. 30).	
[2][4. AFFIDAVIT, including any affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing	Two rupees.
Exemption.	
Affidavit or declaration in writing when made for the sole purpose of enabling any person to receive any pension or charitable allowance.]	
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
(*a*) if relating to the sale of a bill of exchange.	[1][Four annas].
(*b*) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;	Subject to a maximum of [1][fifteen rupees], [1][two annas] for every Rs. 10,000 or part thereof of the value of the security or share.
(*c*) if not otherwise provided for ..	[3][One rupee eight annas].

1. Substituted by Notification No. 11-L/86 published in the Government Cazette dated 28th Maghar 1986.
2. Article 4 substituted *vide* Act II of 1956.
3. Substituted *vide* Act II of 1956 for "one rupee".

Description of Instrument	Proper Stamp-duty
Exemptions.	
Agreement or memorandum of agreement—	
(*a*) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43 ;	
(*b*) made in the form of tenders to the Government for or relating to any loan.	
AGREEMENT TO LEASE. *See* LEASE (No. 35).	
[1][6. AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to —	
(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or	
(2) the pawn or pledge of movable property,	
where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt —	
(*a*) If such loan or debt is re-payable on demand or more than three months from the date of the instrument evidencing the agreement —	

1. Article 6 substituted *vide* Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.				*Proper Stamp-duty.*		
				If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
			Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.
(*i*) when the amount of the loan or debt does not exceed			200	0 4 6	0 3 0	0 1 6
(*ii*) when it exceeds Rs. 200 but does not exceed			400	0 9 0	0 4 6	0 3 0
Do.	400	do.	600	0 13 6	0 7 6	0 4 6
Do.	600	do.	800	1 2 0	0 9 0	0 6 0
Do.	800	do.	1,000	1 6 6	0 12 0	0 7 6
Do.	1,000	do.	1,200	1 11 0	0 13 6	0 9 0
Do.	1,200	do.	1,600	2 4 0	1 2 0	0 12 0
Do.	1,600	do.	2,500	3 6 0	1 11 0	1 2 0
Do.	2,500	do.	5,000	6 12 0	3 6 0	2 4 0
Do.	5,000	do.	7,500	10 2 0	5 1 0	3 6 0
Do.	7,500	do.	10,000	13 8 0	6 12 0	4 8 0
Do.	10,000	do.	15,000	20 4 0	10 2 0	6 12 0
Do	15,000	do.	20,000	27 0 0	13 8 0	9 0 0
Do.	20,000	do.	25,000	33 12 0	16 14 0	11 4 0
Do.	25,000	do.	30,000	40 8 0	20 4 0	13 8 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000				13 8 0	6 12 0	4 8 0
(*b*) If such loan or debt is repayable not more than three months from the date of such instrument.				Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured.		

Description of Instrument	Proper Stamp-duty
Exemption.	
Instrument of pawn or pledge of goods if unattested.]	
7. APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, moveable or immovable, where made by any writing not being a will.	[1][Twenty five rupees].
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(*a*) where the amount does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.
(*b*) in any other case	[1][Ten rupees.]
Exemptions.	
(*a*) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(*b*) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	
9. APPRENTICESHIP-DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment.	Five rupees.
Exemption.	
Instruments of apprenticeship by which a person is apprenticed by or at the charge of any public charity.	
[2]10. ARTICLES OF ASSOCIATION OF A COMPANY—	
(*a*) when the authorised capital of the Company does not exceed one lakh ;	[3][Fifty.]

1. Substituted by Notification No 11-L/86 published in the Government Gazette dated 28th Maghar 1986.
2. Article 10 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.
3. Substituted *vide* Act II of 1956 for "Twenty-five rupees".

Description of Instrument	Proper Stamp-duty
(*b*) in other cases	[1][Sixty rupees.]
Exemption.	
Articles of any association not formed for profit and registered under section 26 of the Companies Act, 1977.	
See also Memorandum of Association of a Company (No. 39).	
11. ASSIGNMENT. *See* Conveyance (No. 23), Transfer (No. 62), and Transfer of lease (No. 63), as the case may be.	
AUTHORITY TO ADOPT. *See* Adoption—deed (No. 3).	
[2][12. AWARD, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(*a*) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount.
(*b*) if it exceeds Rs. 1,000 but does not exceed Rs. 5,000 ;	[3][Ten rupees.]
and for every additional Rs. 1,000 or part thereof in excess of Rs. 5.000.	[4][Twelve annas subject to a maximum of seventy five rupees.]
13. BILL OF EXCHANGE (as defined by section 2(2) [5][*]) not being a Bond, banknote or currency-note—	
[5](*a*) Deleted.	
(*b*) where payable otherwise than on demand, but not more than one year after date or sight—	

1. Substituted *vide* Act II of 1956 for "Fifty rupees".
2. Article 12 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.
3. Substituted *vide* Act II of 1956 for "Seven rupees eight annas".
4. Substituted *vide* Act II of 1956 for "Eight annas subject to a maximum of fifty rupees".
5. The word and figure "and (3)" and clause (a) in Article 13 deleted by Act XI of 1993.

Description of Instrument.				*Proper Stamp-duty.*		
				If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
			Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.
if the amount of the bill or note does not exceed			200	0 3 0	0 2 0	0 1 0
if it exceeds Rs. 200 and does not exceed			400	0 6 0	0 3 0	0 2 0
Do.	400	do.	600	0 9 0	0 5 0	0 3 0
Do.	600	do.	800	0 12 0	0 6 0	0 4 0
Do.	800	do.	1,000	0 15 0	0 8 0	0 5 0
Do.	1,000	do.	1,200	1 2 0	0 9 0	0 6 0
Do	1,200	do.	1,600	1 8 0	0 12 0	0 8 0
Do.	1,600	do.	2,500	2 4 0	1 2 0	0 12 0
Do.	2,500	do.	5,000	4 8 0	2 4 0	1 8 0
Do.	5,000	do.	7,500	6 12 0	3 6 0	2 4 0
Do.	7,500	do.	10,000	9 0 0	4 8 0	3 0 0
Do.	10,000	do.	15,000	13 8 0	6 12 0	4 8 0
Do.	15,000	do.	20,000	18 0 0	9 0 0	6 0 0
Do.	20,000	do.	25,000	22 8 0	11 4 0	7 8 0
Do.	25,000	do.	30,000	27 0 0	13 8 0	9 0 0
and for every additional Rs, 10,000 or part thereof in excess of Rs. 30,000.				9 0 0	4 8 0	3 0 0
(*c*) where payable at more than one year after date or sight.				The same duty as a Bond (No. 15) for the same amount.		
14. Omitted,						

Description of Instrument	Proper Stamp-duty
[1][15. BOND AS defined by section 2 (5) not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act—	
where the amount or value secured does not exceed Rs. 10.	Three annas.
where it exceeds Rs. 10 and does not exceed Rs. 50	Six annas.
Do. 50 do. 100	Twelve annas.
Do. 100 do. 200	One rupee eight annas.
Do. 200 do. 300	Two rupees four annas.
Do. 300 do. 400	Three rupees.
Do. 400 do. 500	Three rupees twelve annas.
Do. 500 do. 600	Six rupees.
Do. 600 do. 700	Seven rupees.
Do. 700 do. 800	Eight rupees.
Do. 800 do. 900	Nine rupees.
Do. 900 do. 1,000	Ten rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Five rupees.
See ADMINISTRATION BOND (No. 2), CUSTOMS BOND (No. 26), INDEMNITY-BOND (No.34), SECURITY BOND (No. 57).	
Exemption.	
Bond, when executed by—	
any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.]	

1. Article 15 substituted *vide* Act II of 1956.

Description of Instrument	Proper Stamp-duty
16. OMITTED.	
17. CANCELLATION—Instrument of (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for. *See also* Release (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of Trust (No. 64-B).	[1][Ten rupees].
18. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by any Civil or Revenue Court, or Collector or other Revenue Officer.	The same duty as a conveyance (No. 23) for a consideration equal to the amount of the purchase money.
19. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, (a) either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body, (b) to a horse or [2][mule, camel, buffalo. bullock or cow] granted by its seller to the buyer. *See also* Letter of Allotment of Shares (No. 36).	Eight annas.
20. OMITTED.	
[3]21. OMITTED.	
22. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby	[4][Twelve rupees eight annas].

1. Substituted *vide* Act II of 1956 for "Seven rupees eight annas".
2. Inserted by Act XX of 1989 - Notification No. 38-L/89 published in the Government Gazette dated 8th Poh 1989.
3. Article 21 deleted by Act XI of 1993.
4. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of licence, for the benefit of his creditors.	
23. CONVEYANCE as defined by section 2 (10), not being a transfer charged or exempted under No. 62,—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;	[1][Twelve annas].
where it exceeds Rs. 50 but does not exceed Rs. 100	[1][One rupee eight annas].
Do. 100 do. 200	[1][Three rupees].
Do. 200 do 300	[1][Four rupees eight annas].
Do. 300 do. 400	[1][Six rupees].
Do. 400 do. 500	[1][Seven rupees eight annas].
Do. 500 do. 600	[1][Nine rupees].
Do. 600 do. 700	[1][Ten rupees eight annas].
Do. 700 do. 800	[1][Twelve rupees].
Do. 800 do. 900	[1][Thirteen rupees eight annas].
Do. 900 do. 1,000	[1][Fifteen rupees].
and for every Rs. 500 or part thereof in excess of Rs, 1,000:	[1][Seven rupees eight annas].
[2][Provided that a conveyance of immovable property situated within a Municipality shall be chargeable with a stamp duty at double the rate hereinbefore provided]: [3][Provided further that a conveyance of immovable property the amount or value of the consideration whereof exceeds	

1. Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1988.
2. Added by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.
3. Proviso added *vide* Act V of 2004.

Description of Instrument	Proper Stamp-duty
Rs. 5,000 but does not exceed Rs. 10,000 shall be chargeable with a stamp-duty at double the rate hereinbefore provided and where such amount or value exceeds Rs. 10,000 it shall be chargeable with a stamp duty at three times the said rate.	
Exemption.	
Assignment of copyright by entry made under the Copyright Act.	
CO-PARTNERSHIP-DEED. See partnership (No. 46).	
24. COPY OR EXTRACT certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(*i*) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee;	[1][Twelve annas].
(*ii*) in any other case	[1][One rupee eight annas].
Exemptions.	
(*a*) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	
(*b*) Copy of, or extract from, any register relating to births, baptisms, namings dedications, marriages, divorces, deaths or burials.	
25. COUNTERPART OR DUPLICATE of any instrument chargeable with duty and in respect of which the proper duty has been paid,—	

1. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
(*a*) if the duty with which the original instrument is chargeable does not exceed one rupee ;	The same duty as is payable on the original.
(*b*) in any other case	[1][One rupee eight annas].
Exemption.	
Counterpart of any lease granted to a cultivator when such lease is exempted from duty.	
[2]6. CUSTOMS—BOND—	
(*a*) where the amount does not exceeed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount
(*b*) in any other case	[1][Ten rupees.)
27. DEBENTURE (whether a mortgage debenture or not), being a marketable security transferable—	
(*a*) by endorsement or by a separate instrument of transfer ;	The same duty as a Bond (No.15) for the same amount.
(*b*) by delivery ..	The same duty as a Conveyance (No.-23) for a consideration equal to the face amount of the debenture.
EXPLANATION.—The term "Debenture" includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.	
Exemption.	
A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debenture	

1. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
so issued are expressed to be issued in terms of the said mortgage-deed. *See also* Bond (No.15), and sections 8 and 55.	
DECLARATION OF ANY TRUST. *See* TRUST (No. 64).	
28. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.	One anna.
DEPOSIT OF TITLE-DEEDS. *See* AGREEMENT relating to DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6).	
DISSOLUTION OF PARTNERSHIP. *See* PARTNERSHIP (No. 46).	
29. DIVORCE—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	[1][Twenty rupees.]
DOWER.—Instrument of. *See* SETTLEMENT (No. 58).	
DUPLICATE.—*See* COUNTERPART (No. 25).	
30. ENTRY AS AN ADVOCATE OF THE HIGH COURT.	[Three hundred rupees].
31. EXCHANGEOF PROPERTY—Instrument of EXTRACT. See Copy (No. 24).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.

1. Substituted *vide* Act II of 1956 for "Five rupees".
2. Originally the Stamp duty was Rs. 200 which was raised to Rs. 500 *vide* Notification No. 1-L/81. By notification No. 11-L/86, it was further raised to Rs 750. Reduced to Rs. 300 *vide* Council Order No. 216-C of 1942 published in the Government Gazette dated 13th Chet, 1998.

Description of instrument	Proper Stamp-duty
32. FURTHER CHARGE—Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(*a*) when the original mortgage is one of the description referred to in clause (*a*) of Article No. 40 (that is, with possession) ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(*b*) when such mortgage is one of the description referred to in clause (*b*) of Article No. 40 (that is, without possession)—	
(*i*) if at the time of execution of the instrument of further charge possession of the property is given, or agreed to be given under such instrument ;	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(*ii*) if possession is not so given ..	The same duty as a Bond (No.15) for the amount of the further charge secured by such instrument.
33. GIFT—Instrument of, not being a SETTLEMENT (No. 58) or WILL OR TRANSFER (No. 62).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
HIRING AGREEMENT or agreement for service. *See* AGREEMENT (No. 5).	
34. INDEMNITY-BOND	The same duty as a Security-Bond (No. 57) for the same amount.
INPECTORSHIP-DEED. *See* COMPOSITION-DEED (No. 22).	
INSURANCE. *See* POLICY OF INSURANCE (No. 47).	

Description of Instrument	Proper Stamp-duty
35. LEASE, including an under-lease or sub-lease and any agreement to let or sub-let—	
(*a*) where by such lease the rent is fixed and no permium is paid or delivered—	
(*i*) where the lease purports to be for a term of less than one year;	The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.
(*ii*) where the lease purports to be for a term of not less than one year but not more than three years;	The same duty as a Bond (No.15) for the amount or value of the average annual rent reserved.
(*iii*) where the lease purports to be for a term in excess of three years;	The same duty as a Conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved.
(*iv*) where the lease does not purport to be for any definite term ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(*v*) where the lease purports to be in perpetuity ;	The same duty as a Conveyance (No.23) for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(*b*) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

Description of Instrument	Proper Stamp-duty
(*c*) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered: Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
Exemption. Lease and its counterpart executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.	[1][Two annas].
36. LETTER OF ALLOTMENT OF SHARES IN any company or proposed company, or in respect of any loan to be raised by any company or proposed company. *See also* Certificate or other Document(No.19)	
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.	[1][Two annas].

1. Substituted by Notification No 11-L/86 published in Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
LETTER OF GUARANTEE. *See* Agreement(No.5).	
38. LETTER OF LICENCE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	[1][Twelve rupees eight annas]
[2][39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(*a*) if accompained by articles of association under section 17 of the Companies Act, 1977 ;	Thirty rupees.
(*b*) if not so accompained ..	Eighty rupees.
Exemption.	
Memorandum of any association not formed for profit and registered under section 26 of the Companies Act, 1977].	
40. MORTGAGE DEED, not being an *Agreement relating to Deposit of Title-Deeds, Pawn or Pledge* (*No.* 6), *Mortgage of a crop* (*No.* 41) *or Security-Bond* (*No.* 57)—	
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.
(*b*) when possession is not given or agreed to be given as aforesaid ;	The same duty as a Bond (No. 15) for the amount secured by such deed.

1. Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Magher 1986.

2. Article 39 substituted *vide* Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
40. MORTGAGE-DEED—*continued*.	
EXPLANATION.--A mortgagor who gives to the mortgagee a power of attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this Article.	
(*c*) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs. 1,000;	[1][Twelve annas].
and for every Rs. 1000 or part thereof secured in excess of Rs. 1,000.	[1][Twelve annas].
Exemption.	
Letter of hypothecation accompanying a bill of exchange.	
41. MORTGAGE OF A CROP, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—	
(*a*) when the loan is repayable not more than three months from the date of the instrument—	
for every sum secured not exceding Rs. 200 ;	[1][One and a half anna].
and for every Rs. 200 or part thereof secured in excess of Rs. 200 ;	[1][One and a half anna].

1. Substituted *vide* Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986,

Description of Instrument	Proper Stamp-duty
41. MORTGAGE OF A CROP—*concluded.*	
(*b*) when the loan is repayable more than three months, but not more than eighteen months, from the date of the instrument—	
for every sum secured not exceeding Rs. 100..	[1][Three annas].
and for Rs. 100 or part thereof secured in excess of Rs. 100.	[1][Three annas].
42. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.	[2][Three rupees].
See also PROTEST OF BILL OR NOTE (No. 50).	
43. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—	
(*a*) of any goods exceeding in value twenty rupees;	[1][Three annas].
(*b*) of any stock or marketable security exceeding in value twenty rupees.	Subject to a maximum of [1][fifteen rupees,] [1][two annas] for every Rs.10,000 or part thereof of the value of the stock or security.
44. OMITTED.	
ORDER FOR THE PAYMENT OF MONEY.	
See BILL OF EXCHANGE (No. 13).	
[3][45. PARTITION—Instrument of—as defined by section 2 (15).	The same duty as a Bond (No. 15) for the amount of

1. Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.
2. Substituted *vide* Act II of 1956 for "Two rupees".
3. Article 45 substituted *vide* Notification No. 11-L/86 published in Governmnet Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
45. PARTITION—*continued.*	the value of the separated share or shares of the property. *N. B.*—The largest share remaining after the property is partitioned (or, if there are two or more shares of equalvalue and not smaller than any of the other shares, then one of such equal shares)shall be deemed to bethat from which the other shares are separated : Provided always that — (*a*) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than twelve annas ; (*b*) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than ten times the annual revenue ; (*c*) where a final order for effecting a partition passed by any Revenue Authority or any Civil Court, or an award by an arbitrator directing a partition, is

Description of Instrument	Proper Stamp-duty
45. PARTITION—*concluded.*	stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed twelve annas].
[1][46. PARTNERSHIP—	
A.—*Instrument of*—	
(*a*) where the capital of the partnership does not exceed Rs. 500 ;	Two rupees eight annas
(*b*) in any other case...	Fifteen rupees.
B.—*Dissolution of*	Ten rupees.]
PAWN OR PLEDGE.—See *Agreement relating to Deposit of Title-deeds, Pawn or Pledge* (*No.* 6).	
47. POLICY OF INSURANCE—	
A.—Omitted.	
B.—[2][FIRE INSURANCE and other classes of Insurance, not elsewhere included in this Article, covering goods, merchandise, personal effects, crops, and other property against loss or damage]—	
(1) in respect of an original policy—	
(*i*) when the sum insured does not exceed Rs. 5,000 ;	Eight annas.
(*ii*) in any other case .. .. and	One rupee.
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.
C.—ACCIDENT AND SICKNESS—INSURANCE—	
(*a*) against railway accident, valid for a single journey only.	One anna.

1. Article 46 substituted *vide* Act II of 1956.
2. Substituted for "Fire Insurance" *vide* Notification No 11-I/86 published in Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp duty
Exemption.	
When issued to a passenger travelling by the intermediate or the third class in any railway.	
(*b*) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceeds Rs. 1,000, for every Rs 1,000, or part thereof.	Two annas.
D.—LIFE INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE as is described in Division E of this Article—	
for every sum insured not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof insured in excess of Rs. 1,000—	
(*i*) if drawn singly ..	Six annas.
(*ii*) if drawn in duplicate, for each part.	Three annas.
E—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a Policy [1][of the nature specified in Division B of this Article] with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.	One-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.
General Exemption.	
Letter of cover or engagement to issue a policy of insurance :	
Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.	

1. Substituted for "Fire Insurance" *vide* Notification No. 11-L/86 published in Government Gazette dated 28th Magher, 1986.

Description of Instrument	Proper Stamp-duty
48. POWER-OF-ATTORNEY as defined by section 2(21), not being a PROXY(No.52),—	
(*a*) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution or one or more such documents ;	[1][One rupee].
(*b*) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a) ;	[1][Two rupees].
(*c*) when authorising not more than five persons to act jointly and severally in more than one transaction or generally ;	[1][Ten rupees].
(*d*) when authorising more then five but not more than ten persons to act jointly and severally in more than one transaction or generally ;	[1][Twenty rupees].
(*e*) when given for consideration and authorising the attorney to sell any immovable property ;	The same duty as a Conveyance (No-23) for the amount of the consideration.
(*f*) in any other case	[1][Two rupees] for each person authorised.
EXPLANATION.—For the purposes of this Article more presons than one when belonging to the same firm shall be deemed to be one person.	*N. B.*—the term "registration" includes every operation incidental to registration under the Registration Act.
Exemption.	
[A document whereby aclaimant to have his name entered on an electoral roll or a person objecting to another person's name being brought on the electoral roll authorises another person to act for him].	

1. Substituted *vide* Notification No. 11-L/86 published in Government Gazette dated 28th Maghar, 1986.
2. Exemption to Article 48 added by Act VII of 1994.

Description of Instrument	Proper Stamp-duty
[1][49 PROMISSORY NOTE as defined by section 2 (22)—	
(*a*) when payable on demand—	
(*i*) when the amount or value does not exceed Rs. 250;	One anna.
(*ii*) when the amount or value exceeds Rs. 250, but does not exceed Rs. 1,000;	Two annas.
(*iii*) In any other case	Four annas.
(*b*) when payable otherwise than on demand	The same duty as a Bill of Exchange (No.13) for the same amount payable otherwise than on demand]
50. PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or promissory note.	[2][Two rupees.]
51. Omitted.	
52. PROXY empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (*a*) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (*b*) a local authority, or (*c*) proprietors, members or contributors to the funds of any institution.	[2][Two annas].
53. RECEIPT as defined by section 2 (23) for any money or other property the amount or value of which exceeds twenty rupees.	One anna.

1. Article 49 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

2. Substituted by Notification No. 11-L/86 published in the overnment Gazette dated 28th Maghar, 1986.

Description of Instrument	Proper Stamp-duty
53. RECEIPT—(*continued*). *Exemptions.* Receipt— (*a*) endorsed on or contained in any instrument duly stamped, or exempted under the proviso to section 3 (instruments executed on behalf of the Government) acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured; (*b*) for any payment of money without consideration; (*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue; (*d*) for pay or allowances by non-commissioned officers or soldiers of the Army, when serving in such capacity, or by mounted police-constables; (*e*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum compr.sed in the receipt has been assigned is a non-commsisioned officer or soldier, and serving in such capacity ; (*f*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity; (*g*) given by a headman or lambardar for land revenue or taxes collected by him; (*h*) given for money or securities for	

Description of Instrument	Proper Stamp-duty
Exemptions—concluded. money deposited in the hands of any banker, to be accounted for : Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for : Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.	
See also POLICY OF INSURANCE NO. 47-B (2).	
54. RECONVEYANCE OF MORTGAGED PROPERTY–	
(*a*) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;	The same duty as a Conveyance (No. 23) for the amount of such consideration as set froth in the Reconveyance.
(*b*) in any other case	[1][Fifteen rupees]
55. RELEASE, that is to say, any instrument (not being such a release as is provided for by section 23-A) whereby a person renounces a claim upon another person or against any specified property—	
(*a*) if the amount or value of the claim does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(*b*) in any other case	[1][Seven rupees eight annas].

1. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar, 1986.

Description of Instrument	Proper Stamp-duty
56. Omitted.	
REVOCATION OF ANY TRUST OR SETTLEMENT. *See* SETTLEMENT (No. 58) ; TRUST (No. 64).	
57. SECURITY-BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—	
(*a*) when the amount secured does not exceed 1[Rs. 2,000]	The same duty as a Bond (No. 15) for the amount secured.
(*b*) in any other case ...	1[Rupees fifteen].
Exemptions.	
Bond or other instrument, when executed—	
(*a*) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;	
(*b*) executed by persons taking advances under the agriculturists loans or by the sureties, as security for payment of such advances;	
(*c*) executed by officers of Government [and registered candidates for the posts of cashiers and treasurers] or thier sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof;	
3[(*d*) executed by a guarantee in favour of the Board of Trustees under Dhan Devi Memorial Rajput Kanya Funds.]	

1. Substituted by Act VII of 1994.
2. Inserted in clause (c) after the word "Goverument" by Couucil Order No. 70 dated 31st January 1935 (Notification No. 12-L/91) published in the Government Gazette dated 10th Phagan 1991.
3. Clause (d) inserted by Notification No .22-L/89 published in the Government Gazette dated 31st Har 1989.

Description of Instrument	Proper Stamp-duty
57-A. Deleted.	
58. SETTLEMENT—	
A.—INSTRUMENT OF, (including a deed of dower)	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement: Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed [2][twelve annas].
Exemption. Deed of dower executed on the occasion of a marriage between Mohammadans.	
B.—REVOCATION OF—	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding [2][fifteen rupees].
See also TRUST (No. 64).	
59. SHARE WARRANTS to bearer issued under the Companies Act.	One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.
Exemption. hare warrant when issued by a company under the Companies Act to have effect only upon payment, as composition for that duty, to the	

1. Article 57-A deleted *vide* Act No. VII of 1994.
2. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
Collector of Stamp-revenue, of—	
(*a*) one and a half per centum of the whole subscribed capital of the company, or	
(*b*) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—one and a half per centum of the additional capital so issued.	
59-A. SAPURDNAMA ..	One anna.
SCRIP. *See* CERTIFICATE (NO. 19).	
60. SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel.	One anna.
61. SURRENDER OF LEASE—	
(*a*) when the duty with which the lease is chargeable does not exceed five rupees ;	The duty with which such lease is chargeable.
(*b*) in any other case ..	[1][Seven rupees eight annas].
Exemption.	
Surrender of lease, executed by a lessee in favour of his Zamindar.	
62. TRANSFER (whether with or without consideration)—	
(*a*) of shares in an incorporated company or other body corporate ;	One half of the duty payable on a conveyance (No. 23) for a consideration equal to the value of the share.
(*b*) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8 ;	One half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

1. Substituted by Notification No. 11 L/86 published in Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
(*c*) of any interest secured by a bond, mortgage-deed or policy of insurance,--	
(*i*) if the dutyo n such bond, mortgage-deed or policy does not exceeed five rupees ;	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(*ii*) in any other case ..	[1][Seven rupees eight annas].
(*d*) Omitted.	
(*e*) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	[1][Seven rupees eight annas] or such smaller amount as may be chargeable under clauses (*a*) to (*c*) of this Article.
Exemptions.	
Transfers by endorsement—	
(*a*) of a bill of exchange, cheque or promissory note;	
(*b*) of a warrant for goods, or other mercantile document of title to goods;	
(*c*) of a policy of insurance;	
(*d*) of securities of Government of India.	
See also section 8.	
63. TRANSFER OF LEASE by way of assignment and not by way of under-lease	The same duty as a Conveyance(No.23)for a consideration equal to the amount of the consideration for the transfer.
Exemption.	
Transfer of any lease exempt from duty.	
64. TRUST—	
A.—DECLARATION OF--of, or concerning, any property when made by any writing not being a Will.	[1][Twenty-two rupees eight annas].

1. Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument	Proper Stamp-duty
B.—REVOCATION OF —of, or concerning, any property when made by any instrument other than a Will. *See also* Settlement (No. 58). Valuation. *See* Appraisement (No. 8).	[Fifteen rupees].
65. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof, to the property in any goods lying in or upon any warehouse such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	[1][Six annas].

THE TRUSTS ACT, 1977 (1920 A.D.)

Act No. XLI of 1977.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Short title ; savings.
2. Omitted.
3. Interpretation-clause.

Expressions defined in the Contract Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immovable property

SECTION.

Trust of movable property.

6. Creation of trust.
7. Who may create trusts.
8. Subject of trust.
9. Who may be beneficiary.

Disclaimer by beneficiary.

10. Who may be trustee.

No one bound to accept trust.

Acceptance of trust.

Disclaime of trust.

1. Substituted by Notiflcation No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

SECTION.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. Trustee to execute trust.

12. Trustee to inform himself of state of trust property.

13. Trustee to protect title to trust-property.

14. Trustee not to set up title adverse to beneficiary.

15. Care required from trustee.

16. Conversion of perishable property.

17. Trustee to be impartial.

18. Trustee to prevent waste.

19. Accounts and information.

20. Investment of trust-money.

20-A. Power to purchase redeemable stocks at a premium.

21. Investments made before commencement of this Act.

Deposit in Government Savings Bank.

22. Sale by trustee directed to sell within specified time.

23. Liability for breach of trust.

24. No set-off allowed to trustee.

25. Non-liability for predecessor's default.

26. Non-liability for co-trustee's default.

Joining in receipt for confirmty.

SECTION.

27. Several liability of co-trustees

Contribution as between co-trustees.

28. Non-liability of trustee payng without notice of transfer by beneficiary.

29. Liability of trustee where beneficiary's interest is forfeited to Government.

30. Indemnity of trustees.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. Right to title-deed.

32. Right to reimbursement of expenses.

Right to be recouped for erroneous overpayment.

33. Right to indemnity from gainer by breach of trust.

34. Right to apply to Court for opinion in management of trust-property.

35. Right to settlement of accounts

36. General authority of trustee.

37. Power to sell in lots, and either by public auction or private contract.

38. Power to sell under special conditions.

SECTION.

Power to buy-in and re-sell.

Time allowed for selling trust-property.

39. Power to convey.

40. Power to vary investments.

41. Power to apply property of minors, etc., for their maintenance, etc.

42. Power to give receipts.

43. Power to com pound,

44. Power to several trustees of whom one disclaims or dies.

45. Suspension of trustee's powers by decree.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. Trustee cannot renounce after acceptance.

47. Trustee cannot delegate.

48. Co-trustees cannot act singly.

49. Control of discertionary power.

50. Trustee may not charge for services.

51. Trustee may not use trust-property for his own profit.

52. Trustee for sale or his agent may not buy.

53. Trustee may not buy beneficiary's interest without permission.

SECTION.

Trustee for purchase.

54. Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. Rights to rents and profits.

56. Right to specific execution

Right to transfer of possession.

57. Right to inspect and take copiss of instrument of trust, accounts, etc.

58. Right to transfer beneficial interest.

59. Right to sue for execution of trust.

60. Right to proper trustees.

61. Right to compel to any act or duty.

62. Wrongfal purchase by trus tee.

63. Following trust-property—

into the hands of third persons ;

into that into which it has been converted.

64. Saving of rights of certain transferees.

65. Acquisition by trustee of trust-property wrongfully converted.

66. Right in case of blended property.

SECTION.

67. Wrongful employment by partner-trustee of trust-property for partnership purposes.

68. Liability of beneficiary joining in breach of trust.

69. Rights and liabilities of beneficiary transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. Office how vacated.

71. Discharge of trustee.

72. Petition to be discharged from trust.

73. Appointment of new trustees on death, etc.

76. Appointment by Court.

Rules for selecting new trustees.

75. Vesting of trust-property in new trustees.

Powers of new trustees.

76. Survival of trust.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

77. Trust how extinguished.

78. Revocation of trust.

79. Revocation not to defeat what trustees have duly done

SECTION.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

80. Where obligation in nature of trust is created.

81. Where it does not appear that transferor intended to dispose of beneficial interest.

82. Transfer to one for consideration paid by another.

83. Trust incapable of execution or executed without exhausting trust-property.

84. Transfer for illegal purpose.

85. Bequest for illegal purpose.

Bequest of which revocation is prevented by coercion.

86. Transfer pursuant to rescindable contract.

87. Debtor becoming creditors representative.

88. Advantage gained by fiduciary.

89. Advantage gained by exercise of undue influence.

90. Advantage gained by qualified owner.

91. Property acquired with notice of existing contract.

92. Purchase by person contracting to buy property to be held on trust.

93. Advantage secretly gained by one of several compounding creditors.

SECTION.

94. Constructive trusts in cases not expressly provided for.

95. Obligor's duties, liabilities and disabilities.

96. Saving of rights of *bona fide* purchasers.

THE TRUSTS ACT, 1977 (1920 A. D.)

Act No. XLI of 1977.

[1][*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.* 14-*L*/31).]

An Act to define and amend the law relating to private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

[1]**1.** This Act may be called the Trusts Act, 1977.

Savings.

Nothing herein contained affects the rules of Mohammedan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to State Dharmarth Trust, public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the date on which this Act comes into force.

2. Omitted.

Interpretation clause—"trust".

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

1. Short title, extent and commencement are given and regulated by Act IV of 1977.

the person who reposes or declares the confidence is called "the author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "bedeficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"author of the trust": "trustee": "beneficiary": "trust-property": "beneficial interest": "instrument of trust".

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"breach of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1977, section 229; and all expressions used herein and defined in the Contract Act, shall be deemed to have the meanings respectively attributed to them by that Act.

"registered":

"notice".

Expressions defined in the Contract Act.

CHAPTER II

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Lawful purpose.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

EXPLANATION.—In this section the expression "law" includes, where the trust-property is immovable and situate in a foregin country, the law of such country.

Illustrations.

(*a*) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent cricumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of immovable property.

5. No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing sigend by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of movable property.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(*a*) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of C." This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust for the beneficiaries are not indicated with reasonable certainty.

(*d*) A bequeaths certain property to B., desiring him to divide the bulk of it amoug C's children. This does not create a trust, for the trust property is not indicated with sufficient certainty.

(*e*) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(*a*) by every person competent to contract, and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

Who may be beneficiary

9. Every person capable of holding property may be a beneficiary.

disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

10. Every person capable of holding property may be a trustee, but, where the trust involves the exercise discretion, he cannot execute it unless he is competent to contract.

No one bound to accept a trust.

No one is bound to accept a trust.

Acceptance of trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(*a*) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trsut, and

B and C hold the property in trust for D.

(*b*) A transfers property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c*) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

Trustee to execute trust.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the driections of the author of the turst given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

EXPLANATION.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(*a*) A, a trustee, is simply authorised to sell certain land by public auction. He cannot sell the land by private contract

(*b*) A, a trustee of certain land for X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A. to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

a) The trust property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionery power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustra ion.

The trust-property is immovable property which has been given to the author of the trust by an unregistered instrument Subject to the provisions of the Registration Act, the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property it it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(*a*) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured A is not bound to make good the loss.

(*b*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(*c*) A, a trustee of two debts for B, releases one and compounds the

other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d*) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e*) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(*f*) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g*) A bequeaths certain moneys to B and C as trustees, and authorises them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(*h*) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(*a*) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed *in specie*. B should sell the houses, and invest the proceeds in accordance with section 20.

(*b*) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed *in specie* appears clearly, and B should not sell them.

Trustee to be impartial.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorise the Court to control the exercise reasonably and in good faith of such discretion.

Illustration,

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

Trustee to prevent waste.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

20. Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(*a*) in promissory notes, debentures, stock or other securities of the Government of India, or of the State, or of the United Kingdom of Great Britain and Ireland;

(*b*) in bonds, debentures and annuities charged by the [1][Parliament of the United Kingdom] on the revenues of India:

Provided that no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity;

(*bb*) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock [2][which before the 15th August, 1947 was] issued by the Secretary of State for India in Council under the authority of an Act of Parliament [3][of the United Kingdom] and charged on the revenues of India.

(*c*) in stock or debentures of, or shares in, Railways or other Companies the interest whereon shall have been

1. Substituted *vide* A. L. O. 2008 for "Imperial Parliament."
2. Substituted *vide* A. L. O. 2008 for "which may at any time hereafter be."
3. Inserted *vide* A. L. O. 2008.

guaranteed by the Secretary of State for India in Council, or by the Government of India or in debentures of the Bombay Central Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council ;

(*d*) Omitted.

(*e*) on a first mortgage of immovable property situate in the State: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(*f*) on any other security expressly authorised by the instrument of trust, or by any rule which the High Court may from to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (e) and (f) shall be made without his consent in writing.

20-A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value :

Power to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clause (c) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clause which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

Investments made before commencement of this Act.
Deposit in Government Savings Bank.

Sale by trustee directed to sell within specified time.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorised by a principal Civil Court of original jurisdiction.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

Liability for breach of trust.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(*a*) where he has actually received interest:

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(*c*) where the trustee ought to have received interest, but has not done so:

(*d*) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(*e*) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half yearly rests) at the same rate.

(*f*) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business,

he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

Illustrations.

(*a*) A trustee improperly leaves trust-property outstanding, and it is consequently lost : he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(*c*) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment shall have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(n Trust-property is invcsted in one of the securities mentioned in section (*g*)200, clause (a), (b), (c) or (d). The trustee sells such security for some, purpse not authorised by the terms of the instrument of trust. He is liable at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust.

No set-off allowed to trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for predecessor's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(*b*) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in receipt for conformity.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Several liability of co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all

Contribution as between co-trustees.

be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorise a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or defficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV,

OF THE RIGHTS AND POWERS OF TRUSTEES.

Right to title deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

Right to reimbursement of expenses.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust--property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request,e xpressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest if such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to indemnity from gainer by breach of trust.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in management of trust-property.

34. Any trustee may, without-instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, containd in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell under special conditions.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and

Power to buy-in and re-sell.

rescind or vary any contract for sale, and resell the property so bought-in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby,

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Time allowed for selling trust-property.

Illustrations.

(*a*) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(*b*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorise B, as between him and C, to postpone the sale to an indefinite period.

Power to convey.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to vary investments.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature :

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

Power to apply property of minors etc., for their maintenance, etc.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or

towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

42. Any trustees or trutee may give a receipt in writing for any money, securities or other movable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, etc,

43. Two or more trustees acting together may, if and as they think fit,—

(*a*) accept any composition or any security for any debt or for any property claimed;

(*b*) allow any time for payment of any debt;

(*c*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(*d*) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom one disclaims or dies.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent

that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's powers by decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

Trustee cannot renounce after acceptance.

46. A trustee who has accepted the trust cannot afterwards renounce it except (*a*) with the permission of a principal Civil Court of original jurisdiction, or (*b*) if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

EXPLANATION.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(*a*) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(*b*) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect these rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Trustee may not use trust-property for his own profit.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof ; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the benificiary may buy it, or any part thereof, or obtain a mortgage or release of it, or any part thereof, for himself.

Co-trustees may not lend to one of themselves.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

Rights to rents and profits.

55. The benificiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest ;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(*b*) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest :

Right to transfer beneficial interest.

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorise her to transfer such interest during her marriage.

59. Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracti cable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to sue for execution of trust.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Right to proper trustees.

EXPLANATION I.—The following are not proper persons within the meaning of this section :—

A person domiciled abroad : an alien enemy : a person having an interest inconsistent with that of the beneficiary : a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

EXPLANATION II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(*a*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(*b*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime ; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c*) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) A, a trustee for B, refuses to act, or goes to reside permanently out of India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to any act of duty.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(*a*) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful purchase by trustee.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the net profits of the property, (*b*) be charged with an occupatio n-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being

competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust property into the hands of third persons; into that into which it has been converted.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(*a*) **A**, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*) **A**, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(*i*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act, section 108, or the liability of a person to whom a debt or charge is transferred.

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the

part of intervening transferees in good faith for consideration.

Right in case of blended property.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(*a*) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(*a*) joints in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration

without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

71. The trustee may be discharged from his office only as follows:—

Discharge of trustee.

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, etc.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from the State, or leaves the State for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rules for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (*b*) to the wishes of the person, if any, empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust; and (*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

(*a*) when its purpose is completely fulfilled; or

(*b*) when its purpose becomes unlawful; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(*a*) A converys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(*c*) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*d*) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 66.

Trust incapable of execution or executed without exhausting trust-property.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(*a*) A conveys certain land to B—

"upon trust", and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made ; or

upon trusts that are too vague to be executed ; or

upon trusts that become incapable of taking effect ; or

"in trust for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b*) A transfers Rs, 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(*c*) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

Transfer for illegal purpose.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of

any law, the transfteree must hold the property for the benefit of the transferor.

Bequest for illegal purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Transfer pursuant to rescindable contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Debtor becoming creditor's representative.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage gained by fiduciary.

88. Where a trustee, executor, partner, agent, director of a compay, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantange, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(*a*) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b*) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(*c*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*d*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*e*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(*f*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*g*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*h*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(*a*) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(*b*) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(*c*) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B, Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(*c*) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Obliger's duties, liabilities and disabilities.

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

Saving of rights of *bona fide* purchasers.

THE TRANSFER OF PROPERTY ACT, 1977 (1920 A. D.)

Act No. XLII of 1977.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Omitted.
2. Saving of certain enactments, incidents, rights, liabilities, etc.
3. Interpretation-clause.
4. Enactments relating to contracts to be taken as part of Contract Act.

SECTION.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) Transfer of Property, whether movable or immovable.

5. "Transfer of property" defined.
6. What may be transferred.
7. Persons competent to transfer
8. Operation of transfer.
9. Oral transfer.

SECTION.

10. Condition restraining alienation.

11. Restriction repugnant to interest created.

12. Condition making interest determinable on insolvenc or attempted alienation.

13. Transfer for benefit of unborn persons

14. Rule against perpetuity.

15. Transfer to class some of whom come under sections 13 and 14.

16. Transfer to take effect on failure of prior transfer.

17. Direction for accumulation.

18. Transfer in perpetuity for benefit of public.

19. Vested interest.

20. When unborn person acquires vested interest on transfer for his benefit.

21. Contingent interest.

22. Transfer to members of a class who attain a particular age.

23. Transfer contingent on happening of specified uncertain event.

24. Transfer to such of certain persons as survive at some period not specified.

25. Conditional transfer.

26. Fulfilment of condition precedent.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

SECTION.

28. Ulterior transfer conditional on happening or not happening of specified event.

29. Fulfilment of condition subsequent.

30. Prior disposition not affected by invalidity of ulterior disposition.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

32. Such condition must not be invalid.

33. Transfer conditional on performance of act, no time being specified for performance.

34. Transfer conditional on performance of act, time being specified.

Election.

35. Election when necessary.

Apportionment.

36. Apportionment of periodical payments on determination of interest of person entitled.

37. Apportionment of benefit of obligation on severance.

(B) *Transfer of Immovable Property.*

38. Transfer by person authorised only under certain circumstances to transfer.

39. Transfer where third person is entitled to maintenance.

40. Burden of obligation imposing restriction on use of land,

SECTION.

or of obligation annexed to ownership, but not amounting to interest or easement.

41. Transfer by ostensible owner.

42. Transfer by person having authority to revoke former transfer.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred.

44. Transfer by one co-owner.

45. Joint transfer for consideration.

46. Transfer for consideration by persons having distinct interests.

47. Transfer by co-owners of share in common property.

48. Priority of rights created by transfer.

49. Transferee's right under policy.

50. Rent *bona fide* paid to holder under defective title.

51. Improvements made by *bona fide* holders under defective titles.

52. Transfer of property pending suit relating thereto.

53. Fraudulent transfer.

CHAPTER III.

OF SALES OF IMMOVABLE PROPERTY.

54. "Sale" defined.

Sale how made.

Contract for sale.

SECTION.

55. Rights and liabilities of buyer and seller.

56. Marshalling by subsequent purchaser.

Discharge of incumbrances on Sale.

57. Provision by Court for incumbrance and sale freed therefrom.

CHAPTER IV.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES.

58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.

Simple mortgage.

Mortgage by conditional sale.

Usufructuary mortgage.

59. Mortgage when to be by assurance.

Rights and Liabilities of Mortgagor.

60. Right of mortgagor to redeem.

Redemption of portion of mortgaged property.

60-A. Obligation to transfer to third party instead of retransference to mortgagor.

60-B. Right to inspection and production of documents.

61. Right to redeem separately or simultaneously.

62. Right of usufructuary mortgagor to recover possession.

63. Accession to mortgaged property.

SECTION.

Accession acquired in virtue of transferred ownership.

63-A. Improvements to mortgaged property.

64. Renewal of mortgaged lease.

65. Implied contracts by mortgagor.

65-A. Mortgagor's power to lease.

66. Waste by mortgagor in possession.

Rights and Liabilities of Mortgagee.

67. Right to foreclosure or sale.

67-A. Mortgagee when bound to bring one suit on several mortgages.

68. Right to sue for mortgage-money.

69. Omitted.

70. Accession to mortgaged property.

71. Renewal of mortgaged lease.

72. Rights of mortgagee in possession.

73. Right to proceeds of revenue-sale or compensation on acquisition.

74. Omitted.

75. Omitted.

76. Liabilities of mortgagee in possession.

Loss occasioned by his default.

77. Receipts in lieu of interest.

Priority.

78. Postponement of prior mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed.

80. Omitted.

SECTION.

Marshalling and Contribution.

81. Marshalling securities.

82. Contribution to mortgage-debt.

Deposit in Court.

83. Power to deposit in Court money due on mortgage.

Right to money deposited by mortgagor.

84. Cessation of interest.

Suits of Foreclosure, Sale or Redemption.

85 to 90. Omitted.

Redemption.

91. Persons who may sue for redemption.

92. Subrogation.

93. Prohibition of tacking.

94. Rights of mesne mortgagee.

95. Right of redeeming co-mortgagor to expenses.

96 to 97. Omitted.

Anomalous Mortgages.

98. Rights and liabilities of parties to anomalous mortgages.

99. Omitted.

Charges.

100. Charges.

101. No merger in case of subsequent encumbrance.

SECTION.

Notice and Tender.

102. Service or tender on or to agent.

103. Notice, etc., to or by person incompetent to contract.

104. Power to make rules.

CHAPTER .

OF LEASES OF IMMOVABLE PROPERTY.

105. "Lease" defined.

"Lessor", "lessee", "premium" and "rent" defined.

106. Duration of certain leases in absence of written contract or local usage.

107. Leases how made.

108. Rights and liabilities of lessor and lessee.

(*A*) *Rights and liabilities of the lessor.*

(*B*) *Rights and the liabilities of the lessee.*

109. Rights of lessor's transferee.

110. Exclusion of day on which term commences.

Duration of lease for a year.

Option to determine lease.

111. Determination of lease.

112. Waiver of forfeiture.

113. Waiver of notice to quit.

114. Relief against forfeiture for non-payment of rent.

SECTION.

114-A. Relief against forfeiture in certain other cases.

115. Effect of surrender and forfeiture on under-leases.

116. Effect of holding over.

117. Exemption of leases for agricultural purposes.

CHAPTER VI.

OF EXCHANGES.

118. "Exchange" defined.

119. Right of party deprived of thing received in exchange.

120. Rights and liabilities of parties.

121. Exchange of money.

CHAPTER VII.

OF GIFTS.

122. "Gift" defined.

Acceptance when to be made.

123. Transfer how effected.

124. Gift of existing and future property.

125. Gift to several, of whom one does not accept.

126. When gift may be suspended or revoked.

127. Onerous gifts.

Onerous gift to disqualified person.

128. Universal donee.

SECTION.

129. Saving of donation *mortis causa* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. Transfer of actionable claim.

131. Notice to be in writing, signed.

132. Liability of transferee of action able claim.

133. Warranty of solvency of debtor.

134. Mortgaged debt.

135. Assignment of rights under marine or fire policy of insurance.

SECTION.

136. Incapacity of officers connected with Courts of Justice.

137. Saving of negotiable instruments, etc.

138. (1) Transfer of immovable property only after due registration.

(2) Suit for pre-emption entertainable after transfer made in accordance with registration law.

(3) Mutation in Revenue papers to be applied only on production of a registered deed.

139. Saving of certain Regulations, Hidayats, Instructions, etc.

THE TRANSFER OF PROPERTY ACT, 1977 (1920 A. D.)

Act No. XLII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.* 14-*L*/81).]

An Act to amend the law relating to the Transfer of Property by Act of Parties.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follow :—

CHAPTER I.

PRELIMINARY.

[1]**1.** Omitted.

Saving of certain enactments, incidents, rights, liabilities, etc.

2. Nothing herein contained shall be deemed to affect—

(*a*) the provisions of any enactment not hereby expressly repealed :

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or

(*d*) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction :

and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law, subject to the limitation contained in sections 13, 14, 15, 16 and 20, no disposition of property made by a Hindu shall be invalid by reason only that the person for whose benefit it may have been made was not in existence at the date of such disposition.

Interpretation clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"immovable property" does not include standing timber, growing crops or grass:

"instrument" means a non-testamentary instrument :

[2]["attested", in realtion to an instrument, means attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time and no particular form of attestation shall be necessary:]

1. Short title, extent and commencement are given and regulated by Act IV of 1977.

2. In section 3 definition of "attested" added *vide* Act VI of 1996.

"registered" means registered in the State under the law for the time being in force regulating the registration of documents :

"attached to the earth" means--

(*a*) rooted in the earth, as in the case of trees and shrubs ;

(*b*) imbedded in the earth, as in the case of walls or buildings ; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached :

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent :

[1]["a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

EXPLANATION I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the instrument has been registered under sub-section (2) of section 30 of the Registration Act, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated.

EXPLANATION II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

EXPLANATION III.--A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

Provided that, if the agent fraudulently conceals the fact,

1. In section 3 definition of "notice" substituted *vide* Act VI of 1996.

the principal shall not be charged with notice thereof as agains any person who was a party to or otherwise cognizant of the fraud.]

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Contract Act.

And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Registration Act.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(*A*) *Transfer of Property, whether movable or immovable.*

"Transfer of property" defined.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more persons, whether living or unborn or to himself, [1][or to himself] and one or more other such persons; and "to transfer property" is to perform such act.

[1][In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

What may be transferred.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

1 In section 5, words "or to himself" inserted after the words "or to himself" and paragraph added *vide* Act VI of 1996.

[1][(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

(*e*) A mere right to sue cannot be transferred.

(*f*) A public office cannot be ransferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Contract Act, or (3) to a person legally disqualified to be transferee.

(*i*) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Persons competent to transfer

7. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Operation of transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

1. In section 6 clause (dd) added *vide* Act VI of 1996.

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition restraining alienation.

10. Where propety is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman, so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

[1][Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is tranferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

1. In section 11 second paragraph substituted *vide* Act VI of 1996.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that priod, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails [1][in regard to those persons only and not in regard to the whole class].

Transfer to take effect on failure of prior interest

[2][**16.** Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.]

1. In section 15 last words substituted for "as regards the whole class" *vide* Act VI of 1996

2. Sections 16, 17 and 18 substituted *vide* Act VI of 1996.

[1][17. (1) Where the terms of a transfer of a property direct that the income arising from the property shall be accumlated either wholly or in part during a period longer than—

Direction for accumulation.

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of —

(*i*) the payment of the debts of the transferor or any other preson taking any interest under the transfer, or

(*ii*) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(*iii*) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.]

[1][18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to human or other living being.]

Transfer in perpetuity for benefit of public.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

EXPLANATION. - An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is

1. See footnote under section 16.

directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

When unborn person acquires vested interest on transfer for his benefit.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

EXCEPTION.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to such of certain persons as survive at some period, not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest

shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divi led between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations,

(*a*) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c*) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantialy complied with.

Illustrations.

(*a*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition

shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner,

Illustrations.

(*a*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(*b*) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish, together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A Transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood He loses his life interest in the farm.

(*b*) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the terms prescribed. His interest in the farm ceases.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Transfer conditional on performance of act, no time being specified for performance.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, time being specified.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non- fulfilment of the condition

rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Election when necessary.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forefits the gift of Rs. 1,000.

In the same case, A dies before the election. His repersentative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom.

EXCEPTION TO THE LAST PRECEDING FOUR RULES.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the trans-

fer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty

Apportionment of benefit of obligations on severance.

shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and unltil he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until [1][the Government] by notification in the State Gazette so directs.

Illustrations.

(*a*) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D and must deliver the sheep according to the joint direction of B, C and D.

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D, severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(*B*) *Transfer of Immovable Property.*

Transfer by person suthorised only under certain circnmstances to transfer.

38. Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other perons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficrent for her maintenance, agrees,

1. Substituted *vide* Act VII of 2001 for "His Highness".

for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred [* * * *], the right may be enforced against the transferee, if he has notice [thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

[* * * * * * *]

Burden of obligation imposing restriction on use of land,

40. Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment [in a particular manner of the latter property], or where a third person is entitled to the benefit of an obligation arising out of contract and

or of obligation annexed to ownership but not amounting to interest or easement.

annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be erforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by ostensible owner.

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the trans-

1. In section 39 words "with the intention of defeating such right" omitted and for the words "of such intention" the word "thereof" substituted; illustration, omitted *vide* Act VI of 1996.

2. In section 40 words in brackets substituted for the words "of the latter property or to compel its enjoyment in a particular manner" *vide* Act VI of 1996

fer shall not be voidable on the ground that the transferor was not authorised to make it : provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by person having authority to revoke former transfer.

42. Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to rovoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C, This operate as a rovocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been deterimental to its value.

Transfer by unauthorised person who subsequently acquires interest in property transferred.

43. Where a person [1][fraudulently or] erroneously represents that he is authorised to transfer certain immovble property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner,

44. Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or

1. In section 43 words in brackets inserted *vide* Act VI of 1996.

interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint transfer for consideration.

45. Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund ; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

46. Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(*a*) A, owning a moiety, and B and C each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza

(*b*) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously treated.

Transferee's right under policy.

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bona fide* paid to holder under defective title.

50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A, B is not chargeable with the rent so paid.

Improvements made by *bona fide* holders under defective titles.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Transfer of property pendi ng suit relating there to.

[1]**52.** During the [1][pendency] in any Court having authority in the State, of [1][any] suit or proceeding [1][which is not collusive and] in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[1][EXPLANATION.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

Fraudulent transfer.

[2][**53.** (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

1. 'In section 52 word "pendency" and "any" substituted for "active prosecution" and "a contentions" respectively ; other words in brackets inserted and explanation added' *vide* Act VI of 1996.

2. Section 53 substituted *vide* Act VI of 1996.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

CHAPTER III.

OF SALES OF IMMOVABLE PROPERTY.

"Sale" defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

Such transfer, in the case of tangible immovable property or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Contract for sale.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties, but no such contract shall be valid, unless it is in writing, and signed by the parties.

It does not, of itself, create any interest in or charge on such property.

Rights and liabilities of buyer and seller.

55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

(1) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property [1][or in the seller's title thereto] of which the seller

1. In section 55 (1) (a) words in brackets inserted *vide* Act VI of 1996.

is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents ;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same :

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (*a*) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (*b*) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and in

case (*b*) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [1][any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [1][from the date on which possession has been delivered.]

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in

1. In section 55(4) (b) words in brackets inserted *vide* Act VI of 1996.

value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him [1][*], to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

[2][**56.** If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgaged-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.]

Marshalling by subsequent purchaser.

Discharge of incumbrances on Sale.

57. (*a*) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

Provision by Court for incumbrance and sale freed therefrom.

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property — of such amount as, when invested in securities of the Government of India, or of the State the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

1. In section 55 (6) (b) words "with notice of the payment" omitted *vide* Act VI of 1996.

2. Section 56 substituted *vide* Act VI of 1996.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In this section "Court" means (1) the High Court in the exercise of extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which [1][the Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES.

"Mortgage," "mortgagor," "mortgagee," "mortgage-money" and "mortgage-deed" defined.

58. (*a*) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee ; the principal money and interest of which payment is secured for the time being are called the mortgage-

1. Substituted *vide* Act VII of 2001 for "His Highness."

money, and the instrument [1][* *] by which the transfer is effected is called a mortgage-deed.

Simple mortgage.

(*b*) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(*c*) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale :

[1][Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

Usufructuary mortgage.

(*d*) Where the mortgagor delivers possession [1][or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [2][or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest [2][or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

59. A mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Mortgage when to be by assurance.

A person is said to attest a document when he signs it as a witness after seeing the executant sign it, or on receiving from the executant or if the executant is a *parda nashin*

1. In section 58 in clause (a) "(if any)" omitted, proviso to clause (c) added and in clause (d) first words in brackets inserted *vide* Act VI of 1996.

2. In section 58, clause (d) line seventh and eighth words in brackets substituted for the words "and to appropriate them" and in line ninth word "or" substituted for "and" *vide* Act VI of 1996.

female, from herself after proper identification and acknowledgment that the executant has signed the document.

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem.

[1]**60.** At any time after the principal money has become [1][due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgaged-money, to require the mortgagee (*a*) to deliver [1][to the mortgagor the mortgage-deed and all documents relating to the mortgaged-property which are in possession or power of the mortgagee], (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged-property to him or to such third person as he may direct, or to execute and [1][* *] to have registered an acknowledgment in writing that any right in derogation of his interest transfered to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by the act of the parties or by [1][decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [1][only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired in whole or in part, the share of a mortgagor.

Obligation to transfer to third party instead of re-transference to mortgagor.

[2][**60-A**]. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-

1. In section 60 "due" substituted for "payable," worde in brackets in line five substituted for the words "the mortgage deed, if anv, to the morgagor," words "(Where the mortgage has been effected by a registered deed)" omitted, word "decree" substituted for "under" and word "only" inserted *vide* Act VI of 1996.

2. Sections 60-A and 60-B added and section 61 substituted *vide* Act VI of 1996.

transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession].

[1][**60-B.** A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost and on payment of the mortgagee's costs, and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgage property which are in the custody or power of the mortgagee.]

Right to inspection and production of documents.

[1][**61.** A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.]

Right to redeem separately or simultaneously.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property [2][together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],—

Right of usufructuary mortgagor to recover possession.

(*a*) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorised to pay himself from such rents and profits [3][or any part thereof a part only

1. See footnote under section 60-A.
2. Inserted *vide* Act VI of 1996.
3. Substituted for the words "the interest of the principal money" *vide* Act VI of 1996.

of the mortgage-money],—when the term, if any, prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee [1][the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided.

Accession to mortgaged property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property ; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been aquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Improvements to mortgaged property.

[2][**63-A.** (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in com-

1. Substituted for the words "the principal money" *vide* Act VI of 1996.
2. Section 63-A added and in section 64 words "for a term of years" omitted *vide* Act VI of 1996.

pliance with the lawful order of any public servent or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.]

Renewal of mortgaged lease.

64. Where the mortgaged property is a lease [1][* *], and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;

(*b*) that the mortgagor will defend, or if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease, [2][*] that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incum-

1. See footnote under section 63-A.

2. In section 65 clause (d) words "for a term of years" ommitted and after clause (e) following words omitted "Nothing in clause (c) or in clause (d) so far as it relates to the payment of future rent, applies in the case of an usufructuary mortrgage" *vide* Act VI of 1996.

brance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

[1][* *]

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

[2][**65-A.** (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

Mortgagor's power to lease.

(2) (*a*) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(*b*) Every such lease shall reserve the best rent that can reasonably be obtained, and no premuim shall be paid or promised and no rent shall be payable in advance.

(*c*) No such lease shall contain a covenant for renewal.

(*d*) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(*e*) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed ; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.]

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate ; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

1. See footnote under section 65 (d).
2. Section 65-A added *vide* Act VI of 1996.

EXPLANATION.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

Right to foreclosure or sale.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become [1][due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court [1][a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or [1][a decree] that the property be sold.

A suit to obtain [1][a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

[1][(*a*) to authorise any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or]

(*b*) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorise the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorise a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Mortgagee when bound to bring one suit on several mortgages.

[2][**67-A.** A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the

1. In section 67, clause (a) substituted, "due" substituted for "payable" and "a decree" substituted for "an order" in three places *vide* Act VI of 1996

2. Section 67-A added and section 68 substituted *vide* Act VI of 1996.

mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.]

Right to sue for mortgage-money.

[1][**68.** (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely :—

(*a*) where the mortgagor binds himself to repay the same;

(*b*) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so ;

(*c*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(*d*) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor :

Provided that, in the case referred to in clause (*a*), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (*a*) or clause (*b*) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property].

69. Omitted.

Accession to mortgaged property.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purpose of his security, B is entitled to the increase.

1 See footnote under section 67-A.

(*b*) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

[1]**71.** When the mortgaged property is a lease [* *], and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged ease

72. [2][A mortgagee] may spend such money as is necessary—

Rights of mortgagee in possession.

[2](*a*) omitted.

(*b*) for [2][the preservation of the mortgaged property] from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum:

[2][Provided that the expenditure of money by the mortgagee under clause (*b*) or clause (*c*) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be [2][added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per-cent. per annum.] But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two thirds of the amount that would be required in case of total destruction

1. In section 71 "words for a term of years" omitted *vide* Act VI of 1996.
2. In section 72 "A mortgagee" substituted for the words "When, during the continuance of the mortgage, the mortgagee takes pessession of the mortgaged property, he"; clause (a) omitted; in clause (b) words in brackets substituted for "its preservation"; proviso added and words in brackets after the proviso substituted for the words "a charge on the mortgagedproperty, in addition to the principal money, with the same priority and with interest at the same rate" *vide* Act V Iof 1996.

to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortagagor to the amount in which the mortgagee is hereby authorised to insure.

[1][**73**. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

Right to proceeds of revenue sale or compensation on acquisition.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the land Acquisition Act, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor, as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due.]

[1]**74**. Omitted.

[1]**75**. Omitted.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property ,—

Liabilities of mortgagee in possession.

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own ;

(*b*) he must use his best endeavours to collect the rents and profits thereof ;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature [2][and all rent] accruing due in respect thereof during such possession, and any

1 Section 73 substituted and sections 74 and 75 omitted *vide* Act VI of 1996.
2. Words in brackets in clause (c) inserted *vide* Act VI of 1996.

arrears of rent in default of payment of which the property may be summarily sold ;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principel money ;

(*e*) he must not commit any act which is destructive or permanently injurious to the property ;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money ;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported ;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses [1][properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interets [1][* * *] and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money ; the surplus, if any, shall be paid to the mortgagor ;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his [2][* * *] receipts for the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be [2][and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property].

1. In clause (h) words in brackets are inserted, and words "on the mortgage-money" are deleted *vide* Act VI of 1996.

2. In clause (i) word "gross" omitted and words in brackets added *vide* Act VI of 1996.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default.

77. Nothing in section 76, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipt from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal,

Receipts in lieu of interest.

Priority.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

Illustration.

A mortgages Sultanpur to his bankers, B and Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B and Co., does not exceed Rs. 5,000. B and Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs 10,000. B and Co. are entitled, to the extent of Rs 10,000, to priority over C.

[1]**80.** Omitted.

1. Section 80 omitted *vide* Act VI of 1996.

Marshalling and Contribution.

[1][**81.** If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties].

Marshalling securities.

[2]**82.** [Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date,]

Contribution to mortgage-debt.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the [2][subsequent] mortgagee.

Deposit in Court.

83. At any time after the principal money [3][payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to

Power to deposit in Court money due on mortgage.

1. Section 81 substituted *vide* Act VI of 1996.
2. Section 82 paragraph within brackets substituted and in third paragraph word "subsequent" substituted for "second" *vide* Act VI of 1896.
3. Words in brackets substituted for "has become payable" *vide* Act VI of 1896

institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed [1][and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed [2][and all such other documents] so deposited shall be delivered to the mortgagor or such other person as aforesaid.

[3][Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.]

84. Cessation of interest.

When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or [4][in the case of a deposit, where no previous tender of such amount has been made] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, [5][and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof,

1. Words in brackets substituted for words "if then in his possession or power" *vide* Act VI of 1996.
2. Words in brackets inserted *vide* Act VI of 1996.
3. Words in brackets added *vide* Act VI of 1996.
4. Words in brackets inserted *vide* Act VI of 1996.
5. Words in brackets substituted for the words "as the case may be" *vide* Act VI of 1996.

interest on the principal money shall be payable from the date of such withdrawal].

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money [1][and such notice has not been given before the making of the tender or deposit, as the case may be].

Suits of Foreclosure, sale or Redemption.

85 to **90**. Omitted.

Redemption.

[2][**91.** Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

Persons who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(*b*) any surety for the payment of the mortgage-debt or any part thereof; or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.]

[3][**92.** Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

Subrogation.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed,

1. Words in brackets added *vide* Act VI of 1996.
2. Section 91 substituted *ibid.*
3. Sections 92, 93 and 94 inserted and section 95 substituted *vide* Act VI of 1996.

if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.]

[1][**93.** No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.]

Prohibition of tacking.

[1][**94.** Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.]

Rights of mesne mortgagee.

[1][**95.** Where one of the several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses, properly incurred in such redemption as is attributable to their share in the property.]

Right of redeeming co-mortgagor to expenses.

96 and **97.** Omitted.

Anomalous Mortgages.

98. In the case of [2][an anomalous mortgage], the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Rights and liabilities of parties to anomalous mortgages.

99. Omitted.

1. See footnote under section 92.

2. In section 98 words in brackets substituted for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or a combination of the first and third or the second and third or such forms" *vide* Act VI of 1996.

Charges.

Charges.

100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [1][which apply to a simple mortgage shall, so far as may be, apply to such charge].

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, [2][and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

No merger in case of subsequent encumbrance.

[3][**101.** Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such mortgageeor charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.]

Notice and Tender.

Service or tender on or to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

[4][Where no person or agent on whom such notice should

1. In section 100 words in 1st brackets substituted for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the persons having such charge".
2. Added *vide* Act VI of 1996.
3. Section 101 substituted *vide* Act VI of 1996.
4. In section 102 words in brackets substituted for the words "Where the person or agent on whom such notice should be served cannot be found in the said district or is unknown" *vide* Act VI of 1996.

be served can be found or is known] to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient :

[1][Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.]

[2][Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit [3][in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

Notice, etc., to or by person incompetent to contract.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served [4][on or by] or tender or deposit made, accepted or taken, by the legal curator of the property of such person ; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract ; and the provisions of Order XXXII of the Code of Civil Procedure, shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Power to make rules.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

---

1. Words in brackets added as proviso *vide* Act VI of 1996.
2. Words in brackets substituted for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" *vide* Act VI of 1996.
3. Words in brackets substituted for the words 'in such Court as last aforesaid *vide* Act VI of 1996.
4. In section 103 words "on or by" inserted *vide* Act VI of 1996.

CHAPTER V.

OF LEASES OF IMMOVABLE PROPERTY.

Lease defined.

105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Duration of certain leases in absence of written contract or local usage.

106. In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and [1][either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party], or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Leases how made.

107. A lease of immovable property for any term exceeding one year, and reserving a yearly rent, exceeding rupees fifty can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession :

1. In section 106 words in brackets substituted for the words "tendered or delivered either personally to the party who is intended to be bound by it" *vide* Act VI of 1996.

Provided that [1][Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, direct that leases of immovable property, other than leases for any term exceeding one year, and reserving a yearly rent, exceeding rupees fifty or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

Rights and liabilities of lessor and lessee.

108. In the absence of a contract or local usage to the contrary, the lessor and lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased : —

(A) Rights and Liabilities of the Lessor.

(*a*) The leesor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(*b*) the lessor is bound on the lessee's request to put him in possession of the property :

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

(*d*) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(*e*) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially, and permanently unfit for the purposes for which it was let the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to

1. In section 107 "Government" substituted "for His Highness" *vide* Act VI of 1996.

avail himself of the benefit of this provision :

(*f*) if the lessor neglects to make within a reasonable time after notice, any repairs which he is bound to make, to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(*h*) the lessee may [1][even after the determination of the lease] remove, at any time [2][whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth : provided he leaves the property in the state in which he received it :

(*i*) when a lease of uncertain duration determination by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it

1. Words inserted *vide* Act VI of 1996.
2. Words substituted for the words "during the continuance of the lease," *vide* Act VI of 1996.

was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

[1](*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull down or damage buildings, [belonging to the lessor, or] work mines or querries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of lessor's transferee.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease

1. In clause (o) words in brackets inserted *vide* Act VI of 1996.

is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immovable property is expressed as commencing from a particular day in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Exclusion of day on which term commences.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

111. A lease of immovable property determines—

Determination of lease.

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter [1][* *]; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming

1. Words "or the lease shall become void" omitted *vide* Act VI of 1996.

title in himself ; [1][or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event;] and in [2][any of these cases] the lessor or his transferee [3][gives notice in writing to the lessee of] his intention to determine the lease :

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

1. Inserted *vide* Act VI of 1996.
2. Words substituted for the words "either case" *vide* Act VI of 1996.
3. Words substituted for the words "does some act showing"; *vide* Act VI of 1996.

Relief against forfeiture for non-payment of rent.

114. Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fiteen days, the Court may, in lieu of making a decree for ejectment pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture in certain other cases.

[1][**114-A.** Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

Effect of surrender and forfeiture on under-leases.

115. The surrender, express or implied, of a lease of immovable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by

1. Section 114-A added *vide* Act VI of 1996.

the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

Effect of holding over.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations.

(*a*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100 The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

Exemption of leases for agricultural purposes.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as [1][Government] may by notification published in the Jammu and Kashmir Government Gazette, declare all or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subjet to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

"Exchange" defined.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange."

1. In section 117 "Government" substituted for "His Highness" *vide* Act VI of 1996.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

[1][**119.** If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.]

Right of party deprived of thing received in exchange,

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a sellor as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the life time of the donor and while he is still capable of giving.

Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immovable property, the tranfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

1. Section 119 substituted *vide* Act VI of 1996.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

EXPLANATION.— The word "attest" has the same meaning in this section as in section 59.

Gift of existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

Gift to several of whom one does not accept.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

When gift may be suspended or revoked.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's life-time. A may take back the field.

(*b*) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Onerous gifts.

127. Where a gift is in the form of a single trasfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous,

Onerous gift to disqualified person.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(*a*) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal donee.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by [1][and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.

Saving.

[2][**129.** Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect, save as provided by section 123, any rule of Hindu or Buddhist law, or to affect any rule of Mohammedan law.]

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

Transfer of actionable claim.

130. (1) The transfer of an actionable claim [3][whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafer provided be given or not:

1. In section 128 words in brackets inserted *vide* Act VI of 1996.
2. Section 129 substituted *vide* Act V of 2003.
3. In section 130 words in brackets inserted *vide* Act VI of 1996.

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hrereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

EXCEPTION. Nothing in this section applies to the transfer of a marine or fire policy of insurance [1][or affects the provisions of section 37 of the Insurance Act].

Illustrations.

(*i*) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(*ii*) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in subsection (1) of section 130 and to the provisions of section 132.

Notice to be in writing, signed.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liablility of transferee of actionable claim.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations.

(*i*) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

1. Added *vide* section 81 of the Insurance Act No. XV of 1996.

(*ii*) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Warranty of solvency of debtor.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Mortgaged debt.

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery : secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Assignment of rights under marine or fire policy of insurance.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Incapacity of officers connected with Courts of Justice.

136. No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by him as aforesaid.

Saving of negotiable instruments, etc.

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures or to instruments which are for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

EXPLANATION.— The expression "mercantile doucument of title to goods" includes a bill of lading, dock-warrant, warehou se-keeper's certificate, railway receipt, warrant or order

for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purpoting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

138. (1) No transfer of immovable property, except in a case governed by any special law to the contrary, shall be valid unless and until it is in writing registered and [1][the registration thereof has been completed in accordance with sub-section (3) of section 61 of the Registration Act, 1977.]

(2) No Court shall entertain a suit for pre-emption in respect of transfer of any such immovable property unless the transfer complies with the provision of sub-section (1).

(3) No person shall take possession of, or commence to build or build on, any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provisions of sub-section (1).

(4) No person who has obtained a tranfer of immovable property referred to in sub-section (1) shall apply for and obtain from any Revenue or Settlement Officer or Court any alteration in any existing entry in any Settlement Record or paper, unless such person produces before such officer or Court a duly executed registered instrument [1][the registration whereof has been completed in the manner specified in sub-section (1)].

And no such officer or Court shall alter or cause to be altered any such entry except upon the production of an instrument registered [1][in the aforesaid manner] :

Provided that nothing in this section applies to a lease of agricultural land for one year or to a lease of any other land for a period not exceeding seven years :

Provided also that nothing in sub-sections (3) and (4) shall be deemed to apply to transfers by will or by any rule of intestate succession or by the operation of the law of survivorship.

139. (1) Nothing in this Act shall affect any Regulation, *Hidayat*, Resolution, *Ailan*, Rule or valid custom now in force restricting and regulating transfers of immovable property in any part of the Jammu and Kashmir State or any right therein, or confer any right, or rights of transfer ex-

1. Words in brackets in section 138 substituted by Notification No. 2-L/83 published in the Government Gazette dated 5th Jeth 1983 (Ext). These amendments were to take effect from 20th Assuj, 1982 (5th October, 1925).

pressly taken away or restricted by any such enactment.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1) the restrictions and rules contained in the following shall be observed :—

(*i*) No. 104 of 1893.
(*ii*) State Council Resolution No. 17 of 22nd June 1895.
(*iii*) State Council Resolution No. 9 of 12th October, 1895.
(*iv*) State Council Resolution No. 52 of 9th October, 1897.
(*v*) Ailan No. 18 of 3rd Poh, 1964 ;
(*iv*) Hidayat under section 73 regarding alienation sanctioned by His Highness and conveyed under Chief Minister's letter No. 2301, of 21st July, 1916
(*vii*) Hidayat No. 185/298 of 24th Magh, 1973.
(*viii*) State Council Resolution No. 37 of 24th August, 1896.
(*ix*) Ailan No. 9 of 13th Assuj, 1963.
(*x*) Ailan No. 4 of 18th Baisakh, 1975.
(*xi*) State Council Resolution No. 2 of 29th October, 1903.
(*xii*) State Council Resolution No. 18 of 21st August, 1905.
(*xiii*) State Council Resolution No. 48 of 30th December, 1898.
(*xiv*) Chief Minister's letter No. 9470 of 11th November, 1909 about transfers of land in Mirpur.
(*xv*) Chief Minister's letter No. 280 of 26th April, 1915, about transfers of agricultural lands in the Tehsils of Mirpur, Bhimber, and Sri Ranbirsinghpura in the Province of Jammu ; (tentative).
(*xvi*) S. C. R. No. 48 of 27th March, 1893.
(*xvii*) S. C. R. No. 36 of 10th February, 1903.
(*xviii*) Irshad dated 29th Maghar, 1943.
(*xix*) Irshad dated 23rd Magh, 1962.
(*xx*) Irshad No. 742/613, dated 10th Phagan, 1958.
(*xxi*) Irshad No. 276, dated 17th Chet, 1947.
(*xxii*) Irshad No. 258/278, dated 22nd Maghar, 1957,
(*xxiii*) Irshad dated 15th Baisakh, 1966.
(*xxiv*) Irshad of 27th Poh, 1951.
(*xxv*) Irshad No. 13, of 18th Chet, 1949.
(*xxvi*) S. C. R. No. 50, dated 7th September, 1900.
(*xxvii*) Irshad No. 151/258, dated 27th Sawan, 1972.
(*xxviii*) Irshad No. 760/2076, dated 4th Phagan, 1974.
(*xxix*) Irshad No. 254/23, dated 24th Sawan, 1973,
(*xxx*) Irshad of 19th Baisakh, 1966.

(*xxxi*) Hidayat (Settlement Department) of 1966.
(*xxxii*) Irshad of 2nd Bhadon, 1970.
(*xxxiii*) Irshad of 30th Jeth, 1968.
(*xxxiv*) Ailan No. 11 of 24th August, 1896.

Saving clause.

[1][Nothing in any of the following provisions of this Act, namely :—sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (*c*) of section 31, sections 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to effect—

(*a*) the terms or incidents of any transfer of property made or affected before the date of enforcement of the Transfer of Property (Amendment) Act, 1996 ;

(*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date ;

(*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date ; or

(*d*) any remedy or proceeding in respect of such right, title, obligation or liability ;

and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before such date as aforesaid in any proceeding pending in a Court on that date ; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may, as if this Act had not been passed.]

THE SCHEDULE—Omitted.

THE STATE OFFICIAL SECRETS ACT, 1977 (1920 A. D.)

Act No XLIII of 1977.

CONTENTS.

Preamble.

SECTION.		SECTION.	
1.	Title and extent.	5.	Offences under this Act committed in relation for military affairs should be cognizable ; others non-cognizable.
2.	Definitions.	6.	Procedure when offender arrested.
3.	Penalty for wrongful communication etc. of information.	7.	Jurisdiction.
4.	Section 3 (1) (d) applicable to certain persons.		

---

1. Saving clause to section 139 added *vide* Act VI of 1996.

[1]THE STATE OFFICIAL SECRETS ACT, 1977 (1920 A.D.)

Act No. XLIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81) *and published in Government Gazette, dated* 16*th Chet*, 1977.]

An Act to prevent the disclosure of official documents and information.

WHEREAS it is expedient to prevent the disclosure of official documents and information ; It is hereby enacted as follows :

1. (1) This Act may be called the State Official Secrets Act, 1977 ; and

(2) It extends to the whole of the State.

2. In this Act unless there is something repugnant in the subject or context :—

(1) expression referring to communications includes any communication, whether in whole or in part, and whether the document, or information itself or the substance or effect thereof only be communicated :

(2) "document" includes part of a document :

(3) "civil affairs" means affairs—

[2][(*a*) affecting the relations of the Government with the Government of India or the Government of any State within the Indian Union] ; or

(*b*) relating to fiscal arrangements or other important matters of the State to whatever department they may pertain where the affairs are of such a confidential nature that the public interest would suffer by their disclosure.

3. (1) (*a*) Where a person for the purpose of wrongfully obtaining information enters or is in any part of the premises of any office of the State and either obtains or attempts to obtain any document or copy thereof or knowledge of any military or civil affairs of [3][the Government] which he is not entitled to obtain ;

1. For commencement etc. of this Act see footnote under section 1 of Act IV of 1977.
2. Section 2 (3) (a) substituted *vide* A. L. O 2008.
3. Substituted *vide* Act X of 2010 for "His Highness".

(*b*) where a person knowingly having possession of or control over any document or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not in the public interest to be communicated at that time ; or

(*c*) where a person after having been entrusted in confidence with any document or information relating to the military or civil affairs of the State wilfully and in breach of such confidence communicates the same, when in the public interest it ought not to be communicated ; or

(*d*) where a person by means of his holding or having held an office under the State has lawfully or unlawfully either obtained possession of or control over any document or acquired any information and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document or information to any person to whom the same ought not in the public interest to be communicated at that time ;

he shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) Where a person commits any act specified in clause (*a*) of sub-section (1) without lawful authority or permission (the proof of which authority or permission shall be upon him) the court may presume that he has committed such act for the purpose of wrongfully obtaining information.

4. Clause (*d*) of section 3 (1) shall also apply to a person holding a contract with any department of the State or with the holder of any office under [1][the Government] as such holder where such contract involves an obligation of secrecy and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy as if the person holding the contract and the person so employed were respectively holders of an office under [1][the Government.)

5. (1) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act committed in relation to military affairs of the State shall, for the purposes of the said Act, be deemed to bo cognizable :

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

1. In section 4 "the Government" substituted for "His Highness" *vide* Act X of 1996.

(2) Every other offence against this Act shall be non-cognizable.

6. (1) Any person, being a public servant as defined in the [1]Ranbir Dand Bidhi, may arrest any person who in his view commits any of the offences described in section 5, sub-section (1), and any such person or any police officer who has arrested any person on a charge of any such offence, and any police officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the nearest military station or camp or before a Magistrate of the first class.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but if he does not discharge him, shall without unnecessary delay, take or send him to the nearest police station or to any Magistrate of the first class.

(3) Where any person has been taken or sent to a police station or to a Magistrate under sub-section (2), the provisions of the Code of Criminal Procedure, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such police station or Magistrate without being taken or sent before the commanding or other officer.

7. (1) No Magistrate of the second or third class shall have jurisdiction to try any person for an offence against this Act.

(2) No Court shall proceed to the trial of any person for an offence against this Act except with the consent of [2][the Government].

---

[3]THE JAMMU AND KASHMIR STATE MUSLIM DOWER ACT, 1977. (1920 A. D.)

Act No. XLIV of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September* 1920 *and State Council Resolution No.* 1, *dated* 8*th April* 1925. (*Notification No.* 14-*L*/81 *and published in Government Gazette dated* 16*th Chet*, 1977).

1. (1) This Act may be called the Jammu and Kashmir State Muslim Dower Act, 1977.

1. Ranbir Penal Code.
2. In section (7) "the Government" substituted for "His Highness the Maharaja" *vide* Act X of 1996.
3. As to commencement etc. of this Act see footnote under section 1 of Act IV of 1977.

(2) It extends to the whole of the State.

2. Where the amcunt of dower is stipulated for in any contract of dower by a Mohammedan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien or otherwise to the defendant ; but the amount of the dower to be allowed by the Courts shall be reasonable with reference to the means of the husband and the status of the wife. This rule shall be applicable whether the suit to enforce the contract be brought in the husband's life-time or after his death.

THE CIVIL COURTS ACT, 1977 (1920 A. D.)

Act No. XLVI of 1977.

CONTENTS.

SECTION.

1. Short title.
2. Definitions.
3. The High Court.
4. Civil appellate jurisdiction.
5. Rules for work in High Court.
6. Ministerial officers
7. Superintendence and control of subordinate Courts.
8. Power to make rules.
9. Registers, books, accounts and statements to be kept and furnished by High Court.
10. Procedure of High court in exercise af Civil jurisdiction.
11. Extraordinary original jurisdiction of High Court.

SECTION.

12. Probate jurisdiction of High Court.
13. Classes of Courts.
14. Civil districts.
15. District Judges.
16. Additional Judges.
17. Subordinate Judges.
18. Munsiffs.
19. District Court to be principal Civil Court of original jurisdiction.
20. Original jurisdiction of District Judge in suits.
21. Pecuniary limits of jurisdiction of Subordinate Judges and Munsiffs.
22. Local limits of jurisdiction.

SECTION.

23. Special Judges.

24. Power to invest Subordinate Judge and Munsiff with Small Cause Court jurisdiction and Small Cause Court Judge with ordinary jurisdiction.

25. Exercise by Subordinate Judge or Munsiff of jurisdiction of District Court in certain proceedings.

26. Place of sitting of Court.

27. Suspension or removal.

28. Control of Courts.

29. Power to distribute business.

30. Ministerial officers of Subordinate Courts.

31. Powers to fine Ministerial officers.

32. Delegation of District Judge's powers.

SECTION.

33. Appeals from District Judge or Additional Judge.

34. Appeals from Subordinate Judges and Munsiffs.

35. Power to transfer to Subordinate Judges appeals from Munsiffs.

35-A. Powers to be conferred either by name or by virtue of office.

36. Continuance of powers of officers.

37. Vacations.

38. Transfer of proceedings.

39. Continuance of proceedings on termination of jurisdiction of a court.

40. Bar against trial of certain suits and appeals.

41. Subordinate Court defined.

42. Saving.

43. High Court to be construed as High Court of Judicature.

[1]THE CIVIL COURTS ACT, 1977 (1920 A. D.)

Act No. XLVI Of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September,* 1920 *and State Council Resolution No.* 1, *dated* 8*th April,* 1925. (*Notification No.* 14-*L*/81) *and published in Government Gazette dated* 16*th Chet,* 1977].

1. This Act may be called the Jammu and Kashmir State Civil Courts Act, 1977.

Short title.

2. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

1. For commencement etc. of this Act see footnote under section 1 of Act IV 1977.

(*i*) "small cause" means a suit of the nature cognizable by a Court of small causes under the Small Cause Courts Act :

(*ii*) "value" used with reference to a suit means the amount or value of the subject matter of the suit.

The High Court.

3. There shall continue to be a High Court for the Jammu and Kashmir State.

Civil appellate jurisdiction.

4. The High Court shall be deemed for the purposes of all enactments for the time being in force to be the highest Civil Court of appeal or revision. [1][* * *]

Rules for work in High Court.

5. The High Court shall make rules for the transaction of the work of the High Court.

Ministerial officers.

6. (1) The High Court shall have a Registrar and shall have the power to appoint such ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.

(2) The Registrar and the ministerial officers appointed under this section shall exercise such powers and discharge such duties of non-judicial or *quasi-judicial* nature as the High Court may direct.

(3) Any ministerial officer may be suspended or dismissed from his office by order of the High Court.

Superintendence and control of subordinate Courts.

7. (1) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the High Court.

(2) The High Court shall from time to time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

Power to make rules.

8. (1) The High Court may make rules consistent with this Act and any other enactments for the time being in force -

1. Words "subject to the control of, and the judicial power exercised by His Highness the Maharaja Sahib Bahadur" deleted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

(*a*) providing for the translation of any papers filed in the High Court and copying and printing any such papers or translations, and requiring from the persons at whose instance or on whose behalf they are filed payment of the expenses thereby incurred;

(*b*) declaring what persons shall be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breaches of rules under this clause shall be tried;

(*c*) determining in what cases legal practitioners shall be permitted to address the Court in English.

(*d*) prescribing forms for seals to be used by those Courts;

(*e*) regulating the procedure in cases where any person is entitled to inspect a record of any such Court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies ;

(*f*) conferring and imposing on the ministerial officers of the subordinate Courts such powers and duties of a non-judicial or *quasi-judicial* nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(*g*) prescribing forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(*h*) providing for the inspection of those Courts and the supervision of the working thereof;

(*i*) regulating the exercise of the control vested in the High Court by section 35 (4) of this Act; and

(*j*) regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts, and maintaining proper discipline among these officers.

(2) Whoever breaks any rule made under clause (*b*) shall be punished with a fine which may extend to fifty rupees.

Registers, books, accounts and statements to be kept and furnished by High Court.

9 (1) The High Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court.

(2) The High Court shall comply with such requisitions as may be made by [1][the Government] for certified copies, of,

1. Substituted *vide* Act X of 1996 for "His Highness."

or extracts from records of the Court and the Courts subordinate thereto,

Procedure of High Court in exercise of civil jurisdiction.

10. (1) The High Court, when sitting as a Court of Civil Judicature, shall take evidence and record judgments and orders in such manner as it, by rule, directs, and may frame forms for any proceeding in the Court in the exercise of its civil jurisdiction.

[1](2) Repealed.

Extraordinary original jurisdiction of High Court.

11. The High Court has and shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice.

Probate jurisdiction of High Court.

12. The High Court shall have such power and authority in relation to the granting of probates of last wills and testments and letters of administration of the goods, chattles, credits and all other effects whatsoever of persons dying intestate whether within or without the State as are or may be conferred on it by any law for the time being in force.

Classes of Courts.

13. Besides the High Court, the Courts of Small Causes established under the Small Cause Court Act, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :—

(1) The Court of the District Judge, also called the District Court ;
(2) The Court of the Additional Judge ;
(3) The Court of the Subordinate Judge ; and
(4) The Court of the Munsiff.

Civil districts.

14. (1) For the purposes of this Act [2][the Government] shall divide the territories of the State into civil districts.

1. Section 10 (2) repealed by Notification No. 3-I. 85 published in the Government Gazettee dated 8th Bhadon 1985.
2. Substituted *vide* Act X of 1996 for "His Highness".

(2) [1][The Government] may [2][on the recommendation of the High Court] alter the limits or the number of these districts.

District Judges.

[3][**5.** The Government shall on the recommendation of the High Court appoint as many persons as the Government think necessary to be District Judges and shall post one such person to each district as District Judge of that District :

Provided that the same person may, if the Government on the recommendation of the High Court think fit, be appointed to be District Judge of two or more districts].

Additional Judges.

16. (1) When the business pending before any District Judge requires the aid of an additional Judge or Judges for its speedy disposal, [4][the Government] may [2][on the recommendation of the High Court] appoint such Additional Judge or Judges as may be necessary.

(2) An additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

Subordinate Judges.

[5][**17.** The Government may after consultation with the High Court fix the number of Subordinate Judges to be appointed and when there is a vacancy in that number, may appoint such person as is recommended by the High Court to the said vacancy,]

Munsiffs.

[6][**18.** The Government may after consultation with the High Court fix the number of Munsiffs to be appointed and, when there is a vacancy in that number, may, subject to rules, if any, made under sub-section (3), appoint such person as is recommended by the High Court to the said vacancy.]

1. Substituted *vide* Act X of 1996 for "His Highness."
2. Inserted by Notification No. 3-L/85 published in the Government **Gazette** dated 8th Bhadon 1985.
3. Section 15 substituted *vide* Act XIV of 2002. (For earlier amendments see Act X of 1996, Act XI of 2000 and Notification 3-L/85 published in Goverment Gazette dated 8th Bhadon, 1985).
4. Substituted *vide* Act XIV of 2002 for "His Highness'. (For earlier amendments see Act X of 1996 and Act XI of 2000).
5. Section 17 substituted *vide* Act XIV of 2002. (For earlier amendments see Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985, Act X of 1996 and Act XI of 2000).
6. Section 18 (1) substituted *vide* Act XIV of 2002. (For earlier amendments see Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985, Act X of 1996 and Act XI of 2000.)

(2) Whenever the business pending before a Munsiff requires the aid of an Additional Munsiff for its speedy disposal, the High Court may with the previous sanction of [1][the Government], appoint an Additional Munsiff and such Munsiff shall discharge any of the functions which the Munsiff with the approval of the District Judge may assign to him and in the exercise of these functions he shall exercise all the powers of the Munsiff.

(3) The High Court may, with the previous sanction of [2][the Government], make rules as to the qualifications of persons to be appointed Munsiffs.

District Court to be principal Civil Court of original jurisdiction.

19. The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

Original jurisdiction of District Judge in suits.

20 Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

Pecuniary limits of jurisdiction of Subordiate Judges and Munsiffs.

21. (1) The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordiuate Judge, or Munsiff, shall, [3][be determined, by the High Court] either by including him in a class or grade, or otherwise as [3][it] thinks fit.

(2) The jurisdiction in the case of a Subordiuate Judge may be without limit, but in the case of a Munsiff shall not extend to suits the value of which exceeds one thousand rupees :

Provided that [4][* * *] the High Court [4][may] direct by notification in the Government Gazette with respect to any Munsiff named therein that his jurisdiction shall extend to suits of such value not exceeding two thousand and five hundred rupees as may be sepecified in the notification.

1. Substituted *vide* Act X of 1996 for "His Highness."
2. Substituted *vide* Act XIV of 2002 for "His Highness" (For earlier amendments see Act X of 1996 and Act XI of 2000).
3. In section 21 (1) as amended by 6-L/82 words "be determined by the High Court" and "it" substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.
4. In section 21 (2) proviso words "His Highness may on the recommendation of" omitted and "may" inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

[1][**22** (1) The local limits of the jurisdiction of a Subordinate Judge or Munsiff shall be such as the High Court may define.

Local limits of jurisdiction.

(2) When the High Court posts a Subordinate Judge or a Munsiff to a district the local limits of the district shall, in the absence of any directions to the contrary, be deemed to be the local limits of his jurisdiction.]

[2][**23.** The Government may after consultation with the High Court, appoint any person to be an Honorary Subordinate Judge or Honorary Munsiff and the High Court may confer on any such person all or any of the powers conferable under this Act on a Subordinate Judge or Munsiff with respect to particular classes of suits or with respect to suits generally in any local area.]

Special Judges.

[3][**24.** (1) [The High Court] may, by notification in the Government Gazette confer, within such local limits as [it] thinks fit, upon any Subordinate Judge or Munsiff, the jurisdiction of a Judge of the Court of Small Causes under the Small Cause Court Act for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or two hundred and fifty rupees in the case of a Munsiff, as [it] thinks fit, and may withdraw any jurisdiction so conferred.

Power to invest Subordinate Judge and Munsiff with Small Cause Court jurisdiction and Small Cause Court Judge with ordinary jurisdiction.

(2) [The High Court] may, by notification in the Government Gazette, confer within such local limits as [it] thinks fit on any Judge in charge of a Court of Small Causes all or any of the powers conferable on a Subordinate Judge or a Munsiff with respect to particular classes of [suits] or with respect to [suits] generally in any local area.

25. (1) The High Court may by general or special order authorise any Subordinate Judge to take cognisance of, or any District Judge to transfer to a Subordinate Judge under his control, any of the proceedings hereinafter

Exercise by Subordinate Judge or Munsiff of jurisdiction of District Court in certain proceedings.

1. Section 22 recast by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

2. Section 23 inserted *vide* Act XIV of 2002(For earlier amendments see Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985, Act X of 1996 and Act XI of 2000.)

3. In sub-sections (1) and (2) of section 24 for the words "His Highness", the words "the High Court", the words "as he thinks fit" the words "as it thinks fit" and for the word "cases" the word "suits" wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

mentioned or any class of those proceedings specified in such order.

(2) The proceedings referred to in sub-section (1) are the following, namely —

(*a*) proceedings under the Probate and Administration Act which cannot be disposed of by District Delegates ; and references by Collectors under the fifth paragraph of the third Schedule of the Code of Civil Procedure ;

(*b*) proceedings under the Guardian and Wards Act,

(3) The District Judge may withdraw any such proceedings taken cognisance of by or transferred to a Subordinate Judge and may either himself dispose of them or transter them to a Court under his control competent to dispose of them.

(4) Proceedings taken cognisance of by or transferred to a Subordinate Judge, as the case may be, under this section shall be disposed of by him, subject to the rules applicable to like proceedings when disposed of by the District Judge.

Place of sitting of Court.

26. (1) [1][The High Court] may fix the place or places at which any Court under this Act is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Act may be held at any place within the local limits of its jurisdiction.

Suspension or removal.

27. (1) Any District Judge may be suspended or removed from office by [2][the Government] on the report of the High Court.

[3][(2) Any Subordinate Judge or Munsiff may be suspended from office by the High Court subject to the confirmation of the Government or removal from office by the Government on the report of the High Court.]

Control of Courts.

28. Subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts under this Act within the local limits of his jurisdiction.

1. Substituted for "His Highness" by Notification 3-L/85 published in the Covernment Gazette dated 8th Bhadon 1985.

2. Substituted *vide* Act XIV of 2002 for "His Highness" (For eartler amendment see Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1986, Act X of 1996 and Act XI of 2000).

3. Section 27(2) substituted *vide* Act XIV of 2002 (For earlier amedments see Notification 3-L/85 published in Government Gazette dated 8th Bhadon, 1985 Act X of 1996 and Act XI of 2000).

29. Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit :

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

30. (1) The ministerial officers of the District Courts shall be appointed, and may be suspended or removed by the Judges of those Courts respectively.

Ministerial officers of subordinate Courts.

(2) The ministerial officers of all courts controlled by a District Court, other than Courts of Small Causes, shall be appointed, and may be suspended or removed by the District Court.

(3) Every appointment under this section shall be subject to such rules as [1][the High Court] may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court.

(4) Any order passed by a District Judge under this section shall be subject to the control of the High Court.

31. (1) A District or any Court under the control of District Court may fine, in an amount not exceeding one month's salary, any ministerial officer of the Court for misconduct or neglect in the performance of his duties.

Powers to fine ministerial officers.

(2) The District Court may, on appeal or otherwise, reverse or modify an order made under sub-section (1) by any Court under its control, and may of its own motion, fine upto the amount of one month's salary any ministerial officer of any Court under its control.

32. A District Court may, with the previous sanction of [1][the High Court], delegate to any Subordinate Judge in the district the power conferred on a District Court by sections 28, 29 and 30 of this Act and section 24 of the Code of Civil Procedure, to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court,

Delegation of District Judge's powers.

1. Substituted for "His Highness" by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

Appeals from District Judge or Additional Judge.

33. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction, shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Appeals from Subordinate Judges and Munsiffs.

[**34**. (1) Save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie—

(*a*) to the District Judge where the value of the original suit in which the decree or order was made did not exceed two thousand and five hundred rupees; and

(*b*) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsiff shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) An appeal from the order of District Judge on the appeal from the order of the Munsiff under [1][sub-section (2)] shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

(5) The High Court may, [1][* * *] by notification in the Government Gazette, direct that appeals lying to the District Court under sub-section (2) from all or any of the decrees or orders passed in an original suit by any Munsiff shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals sop referred.

NOTE.—Second appeals to the High Court are regulated by sections 100, 101 and 102 of the Code of Civil Procedure, which are given below for easy reference :—

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to

1. In section 34(4) "sub-section (2)" substituted for "section 25" and in sub-section (5) words "with the previous sanction of His Highness and" deleted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.

the High Court from every decree passed in appeal by any Court subordinate to the High Court, on any of the following grounds, namely :—

(*a*) the decision being contrary to law or to some usage having the force of law ;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law ;

(*c*) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits ;

(*d*) where the decision of the first Court in a suit in which the value of the subject matter exceeds Rs. 100 has been varied or reversed by the lower Appellate Court, on the ground that the decision is against the weight of the evidence in the case.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

101. No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

Power to transfer to Subordinate Judges appeals from Munsiffs.

35. (1) A District Judge may transfer any appeals pending before him from the decrees or orders of Munsiffs to any Subordinate Judge under his administrative control competent to dispose of them.

(2) The District Judge may withdraw any appeal so transferred and either hear and dispose of it himself or tansfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

(4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

[1][**35-A.** Except as otherwise provided by this Act any powers that may be conferred by the High Court on any person under this Act may be conferred on any such person either by name or by virtue of office.]

Continuance of powers of officers.

36. Whenever any person holding an office in the service of the State who, has been invested with any powers under this Act throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like

1. Section 35-A inserted by Notification 3-L/85 published in Government Gazette adted 8th Bhadon, 1985.

local area, he shall, unless [1][the High Court] otherwise directs or has otherwise directed, exercise the same powers in the local area to which he is so transferred or posted.

Vacations.

37. (1) Subject to such orders as may be made by [2][the Government] the days declared in the Jammu and Kashmir Government Gazette by [2][the Government] as public holidays shall be observed as close holidays in Civil Courts.

(2) A Judicial act done by a Civil Court on a day specified as close holiday shall not be invalid by reason only of its having been done on that day.

Transfer of proceedings.

38. Subject to the provisions of any enactment for the time being in force, the High Court may of its own motion, or on the application of party, withdraw any proceeding which is pending in any Court subordinate to it, and for the withdrawal of which provision is not made in sections 24 and 141 of the Code of Civl Procedure, and may either itself dispose of the proceeding or transfer it for disposal to any other subordinate Court.

Continuance of proceedings on termination of jurisdiction of a Court.

39. (1) Where any Civil Court has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in paragraph 17 of the second Schedule or section 37 of the Code of Civil Procedure or in any other enactment for the time being in force.

Bar against trial of certain suits and appeals.

40. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

(2) The presiding officer of an Appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such

1. Substituted for "His Highness" by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.
2. Substituted *vide* Act, X of 1996 for "His Highness."

officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 24 of the Code of Civil Procedure.

Subordinate Court defined.

41. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

Saving.

42. All powers conferred, local limits of jurisdiction of Courts defined and all places fixed for holding of Courts before this Act comes into force shall be deemed to have been conferred, determined and fixed under this Act.

'[**43.** In every enactment for the time being in force and in every appointment, order, rule, bye-law, notification, form and document all references to the High Court or the Judge of the High Court shall be construed when necessary and with such grammatical variations as may be required as having been made to the High Court of Judicature, Jammu and Kashmir State, or a Judge thereof, as the case may be, except when the contrary intention appears from the subject or context.]

THE USURIOUS LOANS ACT, 1977 (1920 A. D.)

Act No. XLVII of 1977.

CONTENTS.

SECTION.		SECTION.	
1.	Short title and extent.		ment or decree.
2.	Definitions.	5.	Contract for usufruct of property in lieu of interest.
3.	Rate of interest to be decreed by Courts.	6.	Rate of interest on future adjustment of accounts.
4	Rate of interest upon a judg-	7.	Re-opening of transactions.

---

1. Section 43 inserted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

[1]THE USURIOUS LOANS ACT, 1977 (1920 A. D.)

Act No. XLVII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No.* 8372, *dated* 11*th September*, 1920 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925, (*Notification No.* 14-*L*/81) *and published in Government Gazette dated* 16*th Chet*, 1977.]

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Usurious Loans Act, 1977.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) [2][The Government] may, by notification in the Jammu and Kashmir Government Gazette, direct that it shall not apply to any specified area, class of persons, or class of transactions.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;

(2) "loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan ;

(3) "suit to which this Act applies" means any suit—

(*a*) for the recovery of a loan made after the commencement of this Act ; or

(*b*) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act in respect of

1. For Commencement etc. of this Act see footnote under section 1 of Act IV of 1977.
2. In section 1 (3) the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.

any loan made either before or after the commencement of this Act.

Rate of interest to be decreed by Courts.

3. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon or where the Court considers the stipulated rate as excessive or unfair, at such rate as the Court shall deem reasonable.

Rate of interest upon a judgment or decree.

4. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

Contract for usufruct of property in lieu of interest.

5. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Rate of interest on future adjustment of accounts.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may have been entered into before, or which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein, or if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

Re-opening of transactions.

7. (1) In any suit to which this Act applies whether heard *ex parte* or otherwise if the Court has reason to believe—

(*a*) that the interest is excessive ;

and

(*b*) that the transaction was, as between the parties thereto, substantially unfair,

the Court may exercise all or any of the following powers, namely, may,—

(*i*) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest ;

(*ii*) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof ; and

(*iii*) set side either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the Court shall not –

(*i*) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction ;

(*ii*) do anything which affects any decree of a Court.

EXPLANATION.—In the case of a suit brought on a series of transactions the expression 'the transaction' means, for the purposes of proviso (i), the first of such transactions.

(2) (*a*) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan ;

(*b*) in considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction ;

(*c*) in considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known or must be taken to have been known, to the creditor ;

(*d*) in considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was

unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor.

EXPLANATION.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan.

(4) Nothing in this section shall effect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide* , and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, a person shall be said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made or gross negligence he would have known it, or when, information of the fact is given to, or obtained by, his agent under the circumstances mentioned in the Contract Act, section 229.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

THE RELIGIOUS ENDOWMENTS ACT, 1977. (1920 A. D.)

Act No. L of 1977.

CONTENTS.

Preamble.

SECTION.

1. Short title and extent.
2. Persons interested may singly sue in case of breach of trust, etc., Powers of civil Court.
3. Nature of interest entitling person to sue.
4. Reference to arbitrators. Arbitration Act applied.

SECTION.

5. Reference under Arbitration Act.
6. Application for leave to institute suits. Costs.
7. Court may require accounts of trust to be filed.
8. Proceedings for criminal breach of trust.

[1]THE RELIGIOUS ENDOWMENTS ACT, 1977 (1920 A. D.)

Act No. L of 1977.

(Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, *dated the* 11*th September,* 1920 *and State Council Resolution No, I, dated* 8*th April* 1925 *(Notification No.* 14-*L*/81) *and published in Government Gazette dated* 16*th Chet*, 1977.]

An Act to enable persons interested in religious endowments to sue the trustee, manager or superintendent of such endowment.

Preamble.

WHEREAS it is expedient to make provision to enable persons interested in a religious endowment to sue the trustee, manager or superintendent of such endowment ; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be ralled the Religious Endowments Act, 1977.

Extent.

(2) It shall extend to the whole of the State.

Persons interested may singly sue in case of breach of trust, etc.

2. Any person or persons interested in any mosque, temple or religious establishment, to which *Ain-i-Dharmarth* does not apply, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager or superintendent, in respect of the trusts vested in, or confided to them respectively ;

Power of civil Court.

and the Civil court may direct the specific performance of any act by such trustee, manager or superintendent,

and may decree damages and costs against such trustee, manager or superintendent,

and may also direct the removal of such trustee, manager or superintendant.

1. For commencement etc. of this Act see footnote under section 1 of Act IV of 1977 •

3. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Nature of interest entitling person to sue.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

4. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators,

Reference to arbitrators.

Whenever any such order shall be made, the provisions of [1][Chapter IV of the Jammu and Kashmir Arbitration Act] shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under [2][Section 21 of the said Act.]

Sub-Arbitration Act applied.

5. Nothing in the last preceding section shall prevent the parties from replying to the Court, or the Court from making the order of reference under [2][section 21 of the Jammu and Kashmir Arbitration Act].

Reference under Sub-Arbitration Act.

6. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

Application for leave to institute suits.

1. Substituted for "Schedule II of the Code of Civil Procedure" *vide* Act II of 2002
2. Substituted for "Schedule II paragraph I of the said Code" *vide* Act II of 2002,

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

Costs.

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs of such portion as it may consider just to be paid out of the estate.

Court may require accounts of trust to be filed.

7. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

Proceedings for criminal breach of trust.

8. No suit or proceeding before any civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a criminal Court for criminal breach of trust.

THE COURT OF WARDS ACT, 1977 (1920 A.D.)

ACT NO. LII of 1977.

CONTENTS.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Title and extent.

2. Existing Rules etc. to be deemed under the Act.

SECTION.

3. Definitions.

CHAPTER II.

THE COURT OF WARDS AND ITS JURISDICTION.

SECTION.

4. Constitution of the Court of Wards and its jurisdiction.

5. Power of Government to make order, in certain cases, directing the Court of Wards to assume superintendence of properties of landholders.

6. Power of Court of Wards, of its own motion, to assume superintendence.

7. Court of Wards shall assume superintendence in cases in which an order is made under section 5 and may do so when Duputy Commissioner is appointed guardian under the State Court of Wards Act.

8. Properties of which there are more proprietors than one.

9. Notification of assumption of superintendence.

10. Operation and finality of orders made under sections 6 7 and 8.

CHAPTER III.

INQUIRY AND ACTION PRECEDING ASSUMPTION OF SUPERINTENDENCE.

11. Inquiry by Deputy Commissioner in order to satisfy himself as to whether action should be taken under the Act.

12. Procedure in inquiry.

CHAPTER IV.

WARDSHIP AND ITS CONSEQUENCES.

SECTION.

13. Vesting of property of Ward in the Court of Wards.

14. Non-liability of land vested in the Court of Wards to sale for arrears of revenue.

15. Disability of wards.

16. Continuing disabilities in certain cases.

17. Power of the Court of Wards to act on behalf of wards and to deal with their properties.

18. Deeds and other instruments.

19. Notice of suit

20. Suits to be in name of Court of Wards.

CHAPTER V.

GENERAL PROVISIONS AS TO THE SUPERINTENDENCE OF THE PERSONS AND PROPERTIES OF WARDS.

21. Court of Wards assuming superintendence of the property to take possession thereof. Procedure as to property situate in other districts.

22. Powers of Court of Wards as to superintendence and control. Audit of accounts and management of legal affairs of wards and properties.

23. Power of Court of Wards to charge expenses against properties under its superintendence.

24. Residence and education of wards.

25. Allowance for ward and his family.

SECTION.

CHAPTER VI.

ASCERTAINMENT AND LIQUIDATION OF LIABILITIES OF WARDS.

26. Notice to claimants.

2 . Presentation of claims.

28. Examination into, admission and rejection of, claims.

29. Bar of claims not duly notified.

30. Exclusion of documents not produced.

31. Decrees against wards or their properties and their execution.

32 Saving of right to sue in certain cases.

33. Appeal and revision.

34. Government may confer the powers of Deputy Commissioner on any person.

CHAPTER VII.

GUARDIANS AND MANAGERS.

35. Appointment, removal and control of guardians and tutors.

36. No person who can succeed to ward to be appointed guardian.

37. Duties and responsibilities of guardians.

38. Appointment, control and removal of managers.

39. Powers of managers.

40. Duties and responsibilities of managers.

SECTION.

41. Termination of appointment of guardian or manager.

42. Guardians and managers to be deemed to be public servants.

43. Deputy Commissioner when to discharge the duties of a gurdian or a manager.

CHAPTER VIII.

RELEASE OF PERSONS AND PROPERTIES FROM SUPERINTENDENCE.

44. Power to release from superintendence.

45. Retention of superintendence of property until discharge of debts.

46. Retention of superintendence where ithere are more proprietors than one.

47. Appointment of guardian on release of minor.

48. Disposal of property after the death of a person of whose property the Court of Wards has assumed superintendence.

49. Delivery of documents and accounts on release of property.

50. Notification as to release from superintendence.

51. Recovery of expenses.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

52. Bar of suits and proceedings.

53. Investigations into matters under Chapters VI and VII to be considered judicial proceedings.

54. Power to make rules.

THE COURT OF WARDS ACT, 1977 (1920 A. D.)

Act No. LII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur (per Chief Minister's letter No.* 13017, *dated* 27*th November*, 1920) *and published in Government Gazette dated* 5*th Magh*, 1977.]

An Act to make better provision for the Court of Wards in the Jammu and Kashmir State.

WHEREAS it is expedient to make better provision for the Court of Wards in the Jammu and Kashmir State ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY,

Title and extent.

1. (1) This Act may be called the Jammu and Kashmir Court of Wards Act, No. LII of 1977.

(2) It extends to the whole of the Jammu and Kashmir State,

Existing rules etc., to be deemed under the Act.

2. All rules and appointments made, notifications and orders issued, authorities and powers conferred, farms and leases granted, rights acquired, liabilities incurred and other things done heretofore in matters dealt with by this Act shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, acquired, incurred and done under this Act.

Definitions.

3. In this Act, unless there be something repugnant in the subject or context, the expression—

(*a*) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but shall not include growing crops or grass ;

(*b*) "land-holder" shall mean a person who possesses any interest in land, whether as proprietor, assignee of the land revenue, lessee of waste lands or otherwise ;

(*c*) "minor" shall mean a person who has not, within the meaning of the State Majority Act, attained his majority ; and

(*d*) "ward" shall mean any person in respect of whose person or the whole or any part of whose property, or of whose person and property, the Court of Wards by this Act constituted, for the time being, has assumed superintendence, but shall not include a joint proprietor the superintendence of whose property has been assumed by the Court of Wards under section 8.

CHAPTER II.

THE COURT OF WARDS AND ITS JURISDICTION.

Constitution of the Court of Wards aud its jurisdiction

4. (1) The Revenue Minister shall be the Court of Wards for the Jammu and Kashmir State.

(2) The Court of Wards may exercise all or any of the powers conferred on it by this Act, either direct or through [1][the Deputy Commissioner] of the district within the limits of which any ward may at any time reside or any part of the property of any ward may be situate, or through any other person whom it may, at any time, in respect of any ward, or the whole or any part of the property of any ward, appoint in that behalf.

(3) The court of Wards may, with the sanction of [2][the Government] from time to time, by general or special order, or by rule made under this Act, delegate any of its powers to any [3][Deputy Commissioner] or other person as aforesaid, and may, at any time, with the like sanction, revoke any such delegation.

(4) The powers and authority by this Act vested in the Court of Wards shall be exercised by it, subject to the control of [2][the Government].

Power of the Government to make order, in certain cases, directing the Court of Wards to assume superintendence of properties of land holders.

5. (1) Any land holder may apply to [2][the Government] to make an order directing that his property be placed under the superintendence of the Court of Wards, and, upon receiving any such application, [2][the Government], may, if it considers it expedient in the public interest so to do, make an order accordingly.

(2) When it appears to [2][the Government] that any

1. Substituted *vide* Act III of 2008 for "the Governor of the Province or the Wazir-i-Wazarat"

2. In sections 4, 5, 7, 11, 16, 17 (2), 34, 44, 45 and 54 for the words "His Highness" the words "the Government" substituted *vide* Act X of 1996.

3. Substituted *vide* Act III of 2008 for "Governor or Wazir-i-Wazarat."

landholder is —

(*a*) by reason of being a famale ; or

(*b*) owing to any physical or mental defect or infirmity ; or ;

(*c*) owing to his having been convicted of a non-bailable offence and to his vicious habits or bad character ; or

(*d*) owing to his having entered upon a course of wasteful extravagance likely to dissipate his property ;

incapable of managing or unfitted to manage his affairs, [1][the Government] may make an order directing that the property of such land-holder be placed under the superintendence of the Court of Wards :

Provided that such an order shall not be made on the ground stated in clause (*c*) or on the ground stated in clause (*d*) unless such land-holder belongs to a family of political or social importance and [1][the Government] is satisfied that it is desirable, on grounds of public policy or general interest, to make such order.

(3) Every order made by [1][the Government] under sub-section (1) or sub-section (2), shall be final and shall not be called in question in any Court of law.

Power of Court of Wards, of its own motion, to assume superintendence.

6. When any land-holder is a minor or a person adjudged by a competent Court to be of unsound mind and incapable of managing his affairs, the Court of Wards may make an order assuming the superintendence of the property or the person and property of such land-holder,

Court of Wards shall assume superintendence in cases in which an order is made under section 5 and may do so when Deputy Commissioner is appointed guardian under the State Court of Wards Act.

7. (1) When, in respect of any land-holder, an order is made by [1][the Government] under sub-section (1) or sub-section (2) of section 5, the Court of Wards shall assume the superintendence of the property of such land-holder, and may in its discretion also assume the superintendence of his person.

(2) When the [2][Deputy Commissioner] is appointed or declared to be guardian of the person or property, or both, of a minor, under the provisions of section 18 of the State Guardian and Wards Act, he shall intimate the fact to the Court of Wards, and the Court of Wards may thereupon, in its discretion, either assume, or refrain from assuming, the superintendence of the person or property, or both (as the case

1. See footnote under section 4.
2. Substituted *vide* Act III of 2008 for "Governor or Wazir-i-Wazarat."

may be), of such minor, and the provisions of this Act shall, if such superintendence be so assumed, apply to the person or property, or both (as the case may be), of such minor.

Properties of which there are more proprietors than one.

8. When there are two or more proprietors of any property and the shares of the several proprietors have not been separated off, and the Court of Wards, acting under section 6, or section 7, assumes the superintendence of the property of one or more, but not all, of such proprietors, the Court of Wards may assume the superintendence also of the shares of such joint proprietor or joint proprietors as is or are not disqualified, paying any such proprietor the surplus income accruing from his share of the property. The superintendence assumed under this section shall extend only to the management of the share of the joint proprietor in such joint property and shall not, as regards such share include the power to sell or mortgage the same or any part thereof or to grant a lease thereof for a period exceeding 20 years or to create any charge thereon or interest therein.

Notification of assumption of superintendence.

9. Whenever the Court of Wards assumes the superintendence of the person or property of any person under any of the provisions of this Act, the order of assumption shall be notified in the Government Gazette and [1][shall specify the district, the Deputy Commissioner of which] shall be put in charge on behalf of the Court of Wards.

Operation and finality of orders made under sections 6, 7 and 8.

10. Every order made by the Court of Wards assuming, under sections 6, 7 and 8 respectively, the superintendence of the person or property, or both, of any person shall take effect from the date fixed in this behalf in the notification published under section 9, and shall be final and shall not be called in question in any Court of law.

CHAPTER III.

INQUIRY AND ACTION PRECEDING ASSUMPTION OF SUPERINTENDENCE.

Inquiry by Deputy Commissioner in order to satisfy himself as to whether action should be taken under the Act.

11. (1) For the purpose of satisfying himself as to whether, in respect of any land-holder,—

(*a*) [2][the Government] should be moved to make an order under sub-section (2) of section 5, or

1. Substituted *vide* Act III of 2008 for certain words.

2. See footnote under section 4.

(*b*) the Court of Wards should be moved to make an order under section 6, or

for the purpose of making any report which may be called for in connection with any application of a land-holder under sub-section (1) of section 5, the [1][Deputy Commissioner] may make such inquiry into the circumstances of such land-holder as he may deem necessary, and, pending the taking of any such action, may issue such orders for the temporary custody and protection of the person or property, or both, of such land-holder as he thinks fit.

[2][(1-*a*.). When the [3][Deputy Commissioner] has reason to believe that the landlord whose estate is under inquiry is raising further loans, he may, to prevent the landlord from encumbering the estate further by incurring fresh liabilities during the pendency of the enquiry contemplated by this section, issue an injunction and notify it in the Government Gazette that no person shall advance fresh loans to the land-holder from the date of the publication of the notice till the question of assumption of charge by the Court of Wards has been decided. No Court of law shall grant a decree on a suit instituted against the land-holder or the Court of Wards on basis of money advanced to the land-holder during such prohibition.]

(2) If the land-holder be a minor, the [1][Deputy Commissiner] may direct that the person, if any, then having the custody of the minor, shall produce him, or cause him to be produced, at such place and time as the [4][Deputy Commissiner] appoints, and may make such order for the future custody of the minor, pending the orders of the Court of Wards, as he thinks proper.

(3) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (2) shall require her to be produced in accordance with the manners and customs of the country.

(4) If the land-holder is alleged to be or is of unsound mind, the [1][Deputy Commissioner] shall make application to a competent Court in view to an enquiry being made by such Court for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his

1. Substituted *vide* Act III of 2008 for "Governor or with his permission the Wazir Wazarat".
2. Sub-section (1-a) added by Revenue Department Notification No: R-21 published in the Government Gazette dated 9th Maghar, 1990.
3. substituted *vide* Act III of 2008 for "Governor".
4. Substituted *vide* Act III of 2008 for "Govenor or the Wazir Wazarat".

affairs.

Procedure in inquiry.

12. (1) For the purposes of every enquiry to be made, or direction to be given in pursuance of any of the provisions of this Act, the [1][Deputy Commissioner] may exercise all or any of the powers of a civil Court under the State Code of Civil Procedure.

(2) For the purpose of protecting the property, or any part thereof, of any land-holder, pending an enquiry under sub-section (1) of section 11 [2][Deputy Commissioner] may, subject to the direction and control of the Court of Wards, take possession thereof and appoint a manager and such care-takers in respect thereto as he may deem fit.

CHAPTER IV.

WARDSHIP AND ITS CONSEQUENCES.

Vesting of property of ward in the Court of Wards.

13. (1) Upon the publication of a notfication under section 9, in respect of the property, of any person the whole of such property at the date of the notification, shall vest in the Court of Wards and shall remain so vested until the Court of Wards shall, by notification under section 50, divest itself of the superintendence of the whole or any part thereof, or is otherwise divested of such superintendence in due course of law.

(2) All rights accruing to and property inherited by or vesting in any ward after the publication of a notification under section 9, and while the property of such ward is under the superintendence of the Court of Wards, shall vest in the Court of Wards :

Provided that the Court of Wards may, in its discretion, assume or refrain from assuming, the superintendence of any property which any ward may acquire, otherwise than by inheritance subsequent to the date of the notification published under section 9.

Non-liability of land vested in the Court of Wards to sale for arrears of revenue.

14. No land under the superintendence of the Court of Wards shall be sold for arrears of revenue accruing while such land is under such superintendence.

1. Substituted *vide* Act III of 2008 for "Governor or the Wazir Wazarat".
2. Substituted *vide* Act III of 2008 for "Governor or with his permission the Wazir Wazarat".

15. No ward shall be competent—

Disability of wards.

(*a*) to transfer or create any charge on, or interest in the whole or any part of his property which is under the superintendence of the Court of Wards, or to enter into any contract which may involve him in pecuniary liability :

Provided that nothing in this clause shall be deemed to affect the capacity of a ward to enter into a contract of marriage ; but he shall not incur, in connection therewith, any pecuniary liability, except such as, having regard to the personal law to which he is subject, and to his rank and circumstances, the Court of Wards may, in writing, declare to be reasonable ;

(*b*) without the previous sanction, in writing, of the Court of Wards, (1) to adopt, or (2) to give permission to adopt, or (3) to dispose of any property by will.

16. (1) When the property of any land-holder, in respect of whom an order has been made under sub-section (1) or on the last ground stated in sub- section (2) of section 5, is released from the superintendence of the Court of Wards, such land-holder shall not be competent, without the previous sanction of '[the Government] to alienate the whole or any part of the immovable property which has been so released, in any way, or to create any charge upon any such property extending beyond his life time, and every transfer made or attempted to be made, or charge created or attempted to be created, in contravention of this provision, shall be void.

Continuing disabilities in certain cases.

(2) No suit shall be brought whereby to charge any person upon any promise made after he has ceased to be a ward to pay any debt contracted during the period when he was a ward, or upon any ratification made after he has ceased to be a ward of any promise or contract made during the above period, whether there shall or shall not be any new consideration for such promise or ratification.

17. (1) Subject to the law for the time being in force with respect to transfer of property the Court of Wards may, at any time, mortgage or sell the whole or any part of the property of a ward and may grant leases or farms of the whole or any part of such property for such terms as it thinks fit, and may make such remissions or rental or other arrears and may generally and from time to time pass all such

Power of the Court of Wards to act on behalf of wards and to deal with their properties

1. See footnote under section 4.

orders and do all such acts, not inconsistent with the provisions of this or any other enactment for time being in force, as it may deem to be for the advantage of the ward or the benefit of his property.

(2) The Court of Wards may, for the purpose of raising a loan for the benefit of a ward or his property, hypothecate, with the approval of [1][the Government] any *Jagir*, *Muafi*, pension or assignment of land revenue held by the ward.

Deeds and other instruments.

18. (1) All deeds, contracts or other instruments executed by the Court of Wards in the exercise of its powers of superintendence under this Act shall be executed by the Court of Wards in its own name.

(2) Covenants entered into by the Court of Wards shall be binding on the Court of Wards only so long as the ward or the property affected by such covenants remains under its superintendence and only to the extent of such property; and such covenants shall be binding on the ward or on the person entitled to such property after the ward or the property or both (as the case may be) shall have been released from superintendence.

(3) This sanction shall also apply to all deeds, contracts and other instruments executed before the commencement of this Act.

Notice of suit.

19. No suit relating to the person of any ward or to any property under the superintendence of the Court of Wards shall be instituted in any civil or revenue Court until the expiration of two months after notice in writing has been delivered to, or left at, the office of the [2][Deputy Commissioner] of the district, specified in the order of assumption in the notification under section 9, stating the name and place of abode of the intending plaintiff, the cause of action, and the relief which he claims; and the plaint shall contain a statement that such notice has been delivered or left:

Provided that notice under this section shall not be required in the case of any suit the period of limitation for which will expire within three months from the date of the notification under section 9.

Suits to be in name of Court of Wards.

20. (1) No suit (a) by or on behalf of a ward, or (b) affecting any property under the superintendence of the Court of Wards, shall be brought without the authority of the Court of Wards or of such officer as it may appoint in that behalf, and in every

1. See footnote under section 4.
2. Substituted *vide* Act III of 2008 for "Governor of the Province or the Wazir Wazarat".

such suit brought in with such authority the Court of Wards shall be named as plaintiff.

(2) In every suit against a ward or affecting property under the superintendence of Court of Wards, the Court of Wards shall be named as the defendant.

(3) Suits brought by or against any Court of Wards may be instituted and conducted or defended on behalf of the Court of Wards by the [1][Deputy Commissioner] of the district, specifed in the order of assumption in the notification under section 9, or by the manager or other person authorised, by general or special order or rule made under this Act in that behalf, by the Court of Wards.

CHAPTER V.

GENERAL PROVISIONS AS TO THE SUPERINTENDENCE OF THE PERSONS AND PROPERTIES OF WARDS.

Court of Wards assuming superintendence of the property to take possession thereof. Procedure as to property situate in other districts.

21. As soon as conveniently may be, after the assumption by the Court of Wards, of the superintendence of the property of any person, the [2][Deputy Commissioner] of every district within which any part of such property may be situated or some person authorised, in writing, by him in this behalf, shall [3][× × ×] take possession of all such property and all accounts and papers relating thereto and shall do all other acts and things which may be necessary to secure and protect the same and place it under proper custody and control.

Powers of Court of Wards as to superintendence and control. Audit of accounts and management of legal affairs of wards and properties.

22. The Court of Wards may, from time to time, direct such provision, as it may think fit, to be made in respect of the—

(1) superintendence and supervision of the persons of the wards and properties under its superintendence ;

(2) periodical or special audit, by an independent auditor of the accounts of properties generally or of any particular property as it may think fit ;

(3) management of the legal affairs of properties generally, or of any particular property, as it may think fit.

1. Substituted *vide* Act III of 2008 for "Governor of the Province or the Wazir Wazarat".
2. Substituted *vide* Act III of 2008 for "Wazir Wazarat".
3. Words "subject to the orders of the Governor" deleted *vide* Act III of 2008.

Power of Court of Wards to charge expenses against properties under its superintendence.

23. The Court of Wards may, from time to time, regulate the expenses to be incurred in the supervision, care and management of the wards and properties under its superintendence, and generally in carrying out all or any of the purposes of this Act, and may order that such expenses, or any of them, including all salaries, gratuities and leave allowances of establishments and all contingent and other expenses whatsoever which it shall consider requisite, be charged against such property generally, or against any one or more properties comprised in such property for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

Residence and education of wards

24. (1) The Court of Wards may pass such orders as it thinks fit in respect of the residence of any ward whose person is for the time being under its superintendence and, when he is a male minor, in respect of his education.

(2) The Court of Wards may, from time to time, require any such male minor ward to attend to such tutor, class, school or college, for the purposes of education, as it thinks fit.

Allowance for ward and his family

25. (1) The Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any ward and of his family and dependents.

(2) The Court of Wards may, from time to time, determine what sums may be spent on the education of any minor ward whose person is for the time being under its superintendence.

CHAPTER VI.

ASCERTAINMENT AND LIQUIDATION OF LIABILITIES OF WARDS.

Notice to claimants.

26. (1) On the publication of a notification under section 9, the [1][Deputy Commissioner] of the district, specified in the order of assumption or any other [2][Deputy Commissioner] whom the Court of Wards may appoint in that behalf, shall publish in the

1. Substituted *vide* Act III of 2008 for "Governor of the Province or the Wazir Wazarat".
2. Substituted *vide* Act III of 2008 for "Governor or the Wazir Wazarat".

Gazette a notice, calling upon all persons having claims against the ward or against the property under the superintendence of the Court of Wards to notify the same in writing to such [1][Deputy Commissioner] within six months from the date of the publication o the notice.

(2) The notice may also be published at such places and in such other manner as the Court of wards may, by general or special order, direct or by rule, made under this Act, prescribe.

(3) The [1][Deputy Commissioner] may, if he is satisfied that any claimant had reasonable excuse for not submitting his statement of claim within six months, receive his claim at any time after the expiry of the period aforesaid, but any claim so received shall, unless the [2][Deputy Commissioner] otherwise directs and notwithstanding any law, contract, decree or award to the contrary cease to carry interest from the date of the expiry of the period aforesaid.

Presentation of claims.

27. (1) Every claimant shall together with his statement of claim, present full particulars thereof.

(2) Every document (including entries in books of account) on which the claimant founds his claims, or on which he relies in support thereof, shall be produced before the [1][Deputy Commissioner] issuing the notice mentioned in section 26 with the statement of claim.

(3) Every such document shall be accompanied by a true copy of the same. The [1][Deputy Commissioner] issuing the notice mentioned in section 26 or such officer as he may appoint in that behalf shall mark the original document for the purpose of indentification, and after examining and comparing the copy with it, shall retain the copy, and return the original to the claimant.

Examination into admission and rejection of claims.

28. (1) The [1][Deputy Commissioner] issuing the notice mentioned in section 26 shall, after such enquiry as he may consider necessary decide, as to each claim made against any ward or property, in manner in section 26 and section 27 provided, whether such claim is, either in whole or in part, to be admitted or disallowed, and shall intimate, in writing, his decision in respect of each such claim to the claimant thereof. If such liabilities cannot be paid at once, the decision shall fix the interest (if any) to

1. Substituted *vide* Act III of 2008 for "Governor or the Wazir Wazart".
2. Substituted *vide* Act III of 2008 for "Governor".

be paid thereon from the date of such decision to the date of the payment and discharge of such claim.

Bar of claims not duly notified.

29. Every debt or liability (other than debts due to, or liabilities incurred in favour of the State) to which any ward is subject, or with which any property under the superintendence of the Court of Wards or any part thereof is charged, and which is not duly notified to the said [1][Deputy Commissioner] issuing the notice mentioned in section 26 within the time and in the manner hereinbefore prescribed, shall, subject to the provisions of section 7 and section 13 of the State Limitation Act, be deemed for all purposes and on all occasions, whether during the continuance of the superintendence of the Court of Wards or afterwards, to have been duly discharged :

Provided that the provisions of this section shall not be deemed to extinguish any such debt or liability in any case in which the Court of Wards, after assuming the superintendence of such property, release the same from such superintendence without ascertaining and dealing with the liabilities thereof as in this chapter provided in that behalf, and that, in any such case, in computing the period of limitation applicable to any suit or application for the recovery of any such debt or the enforcement of any such liability, the time from the date of the notification of claim under section 26, to the date of the release of the property from the superintendence of the Court of Wards, shall be excluded.

Exclusion of documents not produced.

30. If any document in the possession or under the control of the claimant is not produced by him as required by section 27, such document shall not be admissible in evidence in any suit or proceeding thereafter brought against a ward or as affecting any property under the superintendence of the Court of Wards by the claimant, or by any person claiming under him.

Decrees against wards or their properties and their execution.

31. (1) Nothing contained in this chapter shall be deemed to empower the [1][Deputy Commissioner] issuing the notice mentioned in section 26 to disallow any claim notified under the said section which is based upon a decree passed by any competent Court, and any such decree may be proved by the production of a certified copy of the same accompanied by a certificate from the proper Court that such decree remains unsatisfied.

1. Substituted *vide* Act III of 2008 for "Governor or the Wazir Wazarat".

(2) On the publication of a notice under section 26, all suits and all proceedings in execution of any decree against a ward or as affecting any property under the superintendence of the Court of Wards then pending in any civil Court shall be stayed until the plaintiff or the decree-holder files a certificate that the claim has been notified in accordance with section 26.

(3) No fresh proceedings in execution of any decree against a ward or as affecting such property, other than a decree in respect of a transaction subsequent to the date of the notification under section 9 shall be instituted in, nor shall any attachment or other process in execution of such decree be issued by, any civil Court, until the decree-holder files a certificate to the effect specified in clause (2).

Saving of right to sue in certain cases.

32. (1) Subject to the provisions of section 19 and section 31, nothing in this chapter shall be construed as preventing any claimant from bringing or prosecuting any suit, in any competent Court, in respect of any claim which has been duly notified, within the time and in the manner hereinbefore prescribed, to the [1][Deputy Commissioner] issuing the notice mentioned in section 26, which has whether in whole or in part, been disallowed by him, but no suit shall at any time be brought or be maintainable in respect of any claim which has not been so notified or to set aside or modify the order of a [1][Deputy Commissioner] issuing the notice mentioned in section 26 (if any) fixing a date for the payment of such claim or regulating the order on which claims against the ward of properties under the superintendence of the Court of Wards shall be paid.

(2) In computing any period of limitation prescribed by the State Limitation Act or section 48 of the State Civil Procedure Code, every period during which proceedings have been stayed or temporarily barred by reasons of the provisions of this section or of section 31 shall be excluded.

Appeal and revision.

33. No appeal shall lie from any decision given or order made by a [2][Deputy Commissioner] under this chapter, but nothing in this section shall be deemed in any way to limit or interfere with the power of the Court of Wards to revise any such decision or order.

1. Substituted *vide* Act III of 2008 for "Governer or the Wazir Wazarat".
2. Substituted *vide* Act III of 2008 for "Governor or a Wazir Wazarat".

34. For the purposes of this chapter, [1][the Government] may, at any time or at any stage of any proceedings thereunder invest any person with all or any of the powers of [2][a Deputy Commissioner]

The Government may confer the powers of Deputy Commissioner on any person.

CHAPTER VII.

GUARDIANS AND MANAGERS.

35. (1) The Court of Wards may, from time to time, appoint guardians for the care of the persons of such wards as are minors or of unsound mind, or are suffering from any physical or mental defect or infirmity, or are females and unmarried, and may control and remove such guardians, and no appointment of a guardian for any ward shall be valid, unless and until it has been confirmed by the Court of Wards.

Appointment, removal and control of guardians and tutors.

(2) In appointing a guardian under this section, the Court of Wards shall be guided, as far as may be, by the provisions of section 17 of the State Guardians and Wards Act, and if a ward leaves or is removed from the custody of a guardian appointed under this section, the [3][Deputy Commissioner] of the district, specified in the notification issued under section 9, may exercise the powers conferred by section 25 of the said Act on a Court as defined in that Act.

(3) The Court of Wards may appoint any person to be the tutor of any minor male ward and may control and remove such tutor. Every tutor so appointed shall discharge such duties and regulate his conduct in such manner as the Court of Wards may from time to time direct.

36. No person who would be the next legel heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian ; but nothing in this section shall apply to the mother of a ward or to a testamentary guardian.

No person who can succeed to ward to be appointed guardian.

37. A guardian appointed under this Chapter shall be charged with the custody of the ward, and shall, subject to the supervision and direc-

Duties and responsibilities of guardians.

1. See footnote under section 4.
2. Substituted *vide* Act III of 2008 for "Governor or Wazir Wazarat."
3. Substituted *vide* Act III of 2008 for "Governor of the Province or the wazir wazarat".

tion of the Court of Wards, and the rules (if any) made, under this Act, in that behalf, make suitable provision for his maintenance, health and, if he be a minor, his education and such other matters as the personal law to which the ward is subject, requires and shall —

(*a*) give such security, if any, as the Court of Wards think fit for the due performance of his duty ;

(*b*) submit such accounts as the Court of Wards may direct ;

(*c*) pay the balance due from him thereon ;

(*d*) continue liable to account to the Court of Wards after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship ;

(*e*) apply for the sanction of the Court of Wards to any act which may involve expense not previously sanctioned by it ; and

(*f*) be entitled to such salary and allowance, to be paid out of the proceeds of the property of the ward, as the Court of wards thinks fit, in respect of the execution of his duties as such.

Appointment, control and removal of managers.

38. The Court of Wards may appoint one or more managers for any properties under its superintendence and may control and remove such managers.

Powers of managers

39. A manager appointed by the Court of Wards shall subject to the supervision and direction of the Court of Wards, and the rules (if any) made, under this Act, in that behalf, have power to collect the rents of the lands placed under his charge as well as all other money due to the ward or person whose property he manages, and to grant receipts therefor ; and he may, subject to the same supervision, direction and rules (if any), grant and renew leases and farms and do all such lawful acts as he may be generally or specially authorised by the Court of Wards to do for the good management of the property.

Duties and responsibilities of managers.

40. Every manager appointed by the Court of Wards shall, subject to the supervision and direction of the Court of Wards and to the rules (if any) made, under this Act in that behalf, manage the property or properties placed under his charge diligently and faithfully, and he shall—

(*a*) give such security, if any, as the Court of Wards thinks fit, duly to account for what he may receive in respect

of the rents and profits and other income of the property under his charge ;

(*b*) keep accounts in such form and submit them at such time as the Court of Wards may direct ;

(*c*) deal with all money received by him in such manner as the Court of Wards may direct ;

(*d*) apply for the sanction of the Court of Wards to any act which may involve the property in expense not previously sanctioned by it ;

(*e*) be entitled to such salary or allowance, to be paid out of the proceeds of such property, as the Court of Wards thinks fit, in respect of the execution of duties ;

(*f*) be responsible for any loss occasioned to the property by his negligence or wilful default ; and

(*g*) continue liable to account to the Court of Wards after he has ceased to be manager for his receipts and disburesments during the period of his management.

Termination of appointment of guardian or manager.

41. The appointment of every guardian and manager appointed under this chapter, shall terminate on the Court of Wards ceasing to exercise superintendence of the person or property in respect of whom or which such guardian or manager, as the case may be, has been appointed.

Guardians and managers to be deemed to be public servants.

42. (1) Every guardian and manager appointed under this chapter shall be deemed to be a public servant within the meaning of [1]section 13 of the Ranbir Dand Bidhi and for the purposes of that Code.

(2) In the definition of "legel remuneration"contained in [2]section 125 of the Ranbir Dand Bidhi the word "Sarkar" shall, for the purposes of this section, be deemed to include the Court of Wards.

Deputy Commissioner when to discharge the duties of a guardian or a manager.

43. If no such guardian or manager is appointed by the Court of Wards the [3][Deputy Commissioner] of the district, specified in the notification under section 9 or any other [4][Deputy Commissioner] whom the Court of Wards may appoint in that behalf, shall be competent to do anything

1. Section 21 Ranbir Penal Code.
2. Section 161 Ranbir Penal Code Word used is "Government".
3. Substitted *vide* Act III of 2008 for "Governor of the province or the Wazir, Wazarat".
4. Substituted *vide* Act III of 2008 for "Governor or Wazir Wazarat'

that might be lawfully done by a guardian of the person or a manager of the property appointed under this chapter.

CHAPTER VIII.

RELEASE OF PERSONS AND PROPERTIES FROM SUPERINTENDENCE.

Power to release from superintendence.

44. The Court of Wards may, at any time, realease any person or property, or both, from its superintendence :

Provided that the property of a land-holder, who has been made a ward in accordance with an order made under section 5, shall not be released from the superintendence of the Court of Wards without the previous sanction of [1][the Government] :

Provided further, that person or proprety, under the charge of the Court of Wards in accordance with the provisions of sub-section (2) of section 7, shall not be released without the concurrence of the Court which appointed or declared the [2][Deputy Commissioner] to be guardian of the person or property, or both, of the person concerned, under the State Guardians and Wards Act.

Retention of superintendence of property until discharge of debts.

45. (1) Whenever a ward dies or ceases to be under any legel incapacity, and his property is, at the time of his death or cessation of incapacity, still encumbered with debts and liabilities, the Court of Wards may either release such property or, with the sanction of [1][the Government] retain it or any part thereof under its superintendence until such debts and liabilities have been discharged.

(2) In any case provided for in sub-section (1) the Court of Wards may together with the property of any such ward also retain, until the said debts and liabilities have been discharged, the property of which it has assumed the superintence under section 8.

Retention of superintendence where there are more proprietors than one.

46. If, in the case of any property, there are more proprietors than one, the Court of Wards may retain the whole property under its superintendence if one or more of the proprietors remain wards, although other or others may have ceased to be under any legal incapacity :

1. See footnote under section 4.
2. Subsatuted *vide* Act III of 2 08 for "Governor or the Wazir Wazart"

Provided that in such cases a proprietor who has ceased to be disqualified shall not, after the cessation of such disqualification, be deemed to be a ward for the purposes of this Act and the Court of Wards shall pay to such proprietors the surplus income accruing from his share of the joint property.

Appointment of guardian on realease of minor.

47. (1) When the Court of Wards decides to release from its superintendence the person or property, or both, of any minor, it may, before such realease, by an order in writing, appoint any person to be the guardian of the person or property, or both, of such minor.

(2) Such appointment shall take effect from the date of such release.

(3) In appointing a guardian under this section the Court of Wards shall be guided by the provisions of section 17 of the State Guardians and Wards Act, and in every such case the [1][Deputy Commissioner] of the district, specified in the order of assumption in the notification under section 9, shall have the powers conferred upon a [2][Deputy Commissioner] under section 35 (2).

(4) Every such guardian shall have and be subject to the same rights, duties and liabilities as if he had been appointed under the State Guardians and Wards Act.

Disposal of property after the death of a person of whose property the Court of Wards has assumed superintendence.

48. Whenever, in the event of the death of any person of whose property the Court of Wards has assumed superintendence, the succession to his property, or any part thereof, is unclaimed or disputed, the Court of Wards may either direct that the property, or part therof, be made over to any person entitled to or claiming the same, or may institute a suit of interpleader against the several claimants, or may retain the superintendence thereof until a claimant has, in due course of law, established his title thereto in a competent Court.

Delivery of documents and accounts of release of property.

49. Whenever the Court of Wards releases the property of any person from its superintendence, it shall deliver to such person, or if it has appoinred a guardian under sub-section (1) of section 47, to such guardian all documents of title and all papers and accounts (other than State records) relating to such property.

1. Substituted *vide* Act III of 2008 for "Governor of the province or the Wazir Wazarat".
2. Substituted *vide* Act III of 2003 for "Governor or Wazir Wazarat."

50. Whenever the Court of Wards releases any person or property from its superintendence, the fact of such release shall be notified in the Government Gazette, and such release shall take effect from the date fixed in this behalf in the notification.

Notification as to release from superintendence.

51. Any expense incurred by the Court of Wards on account of any property under its superintendence may, after the release of such property, be recovered as an arrear of land revenue due in respect of such property or any part thereof.

Recovery of expenses.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

52. (1) No suit shall be brought in any civil Court in respect of the exercise of any discretion conferred by this Act.

Bar of suits and proceedings.

(2) No suit shall be brought against any officer of the State or any guardian, manager or servant appointed by, and discharging his duties under a Court of Wards for any thing done by him in good faith under this Act.

53. Every investigation conducted by a [1][Deputy Commissioner] with reference to any claim preferred before him under Chapter VI or Chapter VII or to any matter connected with any such claim shall be taken to be a judicial proceeding within the meaning of the [2]Ranbir Dand Bidhi.

Investigation into matters under Chapters VI and VII to be considered judicial proceedings.

54. The Court of Wards may, with the previous sanction of [3][the Government], make rules, consistent with this Act, regulating all or any of the following matters, namely :—

Power to make rules.

(*a*) the management of properties or of all or any property under the superintendence of the Court of Wards ;

(*b*) the procedure to be observed and the powers to be exercised by all or any persons in all or any proceedings under this Act ; and

(*c*) generally for the purpose of giving effect to all or any of the provisions of this Act.

---

1. Substituted *vide* Act III of 2008 for "Governor or Wazir Wazarat"
2. Ranbir Penal Code.
3. See footnote under section 4.

THE KUTH ACT, 1978 (1921 A. D.)

Act No. 1 of 1978.

CONTENTS.

Preamble.

SECTION.

1. Extent, commencement.
2. Interpretation clause.
3. Presumption that Kuth is State property.
4. Acts prohibited.
5. Penalties for acts in contravention of section 4.
6. Presumption that unaccounted for Kuth is the Kuth in respect of which offence committed.
7. Power to prevent commission of offence.
7-A. The same.
8. Power to arrest without warrant.
9. Application for confiscation.
10. Procedure thereupon.
11. Confiscation Kuth, tools, etc., when liable to confiscation.

SECTION.

12. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed.
13. Procedure when offender not known or cannot be found.
14. Appeals from orders under sections 11, 12 and 13.
15. Property when to vest in State.
16. Saving of power to release property seized.
17. Punishment for wrongful seizure.
18. Recovery of money due to State.
19. Operation of other law not barred.
20. Application of Act to other economic plants with sanction of Government.
21. Power to make Rules.

THE KUTH ACT, 1978 (1921 A. D.)

Act No. 1 of 1978.

[*Sanctioned by His Highness the Maharaja Bahadur* per *Chief Minister's letter No.* 1109, *dated the 4th May* 1921 *and published in the Government Gazette dated 24th Jeth*, 1978.]

Preamble.

WHEREAS it is expedient to provide for the conservation, preservation and protection of the Kuth plant (*Sassurea Lappa*) and its produce

in Jammu and Kashmir State and to guard gainst illicit cultivation, extraction, possession and export thereof ; It is hereby enacted as follows :—

Extent.

1. This Act may be called the Jammu and Kashmir State Kuth Act, No. 1 of Samvat 1978. It shall extend to the whole of the territories of the Jammu and Kashmir State. [1][× × ×]

Commencement.

It shall come into force with effect from the date of publication in the Jammu and Kashmir Government Gazette.

Interpretation Clause.

2. In this Act unless there be something repugnant in the subject or context, the expression "Kuth" includes the root, stem, leaves, flower and all other parts of the Kuth plant (*Sassurea Lappa*) also all substances manufactured therefrom, and all preparations or admixtures containing Kuth or substances manufactured therefrom ;

"export" means to take out of the Jammu and Kashmir State territories to any place outside such territories ;

"transport" means to remove Kuth from one place to another within the territories of the Jammu and Kashmir State ;

"Magistrate" means any person invested with Magisterial powers under the Code ofCriminal Procedure and includes any official or other person specially empowered by [2][the Government] to try cases underthis A ct ;

"Kuth offence" means any offence punishable under section 5 of this Act ;

"State territory" means the territory of the Jammu and Kashmir State ;

"Forest officer" includes the Chief Conservator, Conservators, Deputy and Assistant Conservators, Forest Rangers, Foresters, Forest Guards and any persons whom [2][the Government] or any officer empowered by [2][the Government] may, from time to time, appoint, by name or as holding an office, to carry out all or any of the purposes of the Forest Act ;

"Police officer" means and includes all persons of the Police Department of and above the rank of a constable ;

"Customs and Excise officer" includes the Inspector General, Inspectors, Deputy Inspectors, Assistant Inspectors, Mahaldars and Jamadars of the Customs and Excise Department ;

1. Words and figures "with the exception of 1. 2. Poonch Illaqa 3. Chenani Jagir" omitted *vide* Act XIV of 2010.

2. In sections 2, 4, 8, 10 and 20 the words "the Government" substituted for "His Highness" or "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

[1][Revenue officer] includes [2][Deputy Commissioners] Tehsildars, Naib- Tehsildars, Zaildars, Lambards, [3][× × ×] Girdawars and Patwaries.

Presumption that Kuth is State property.

3. All Kuth within the State territory, unless title to it is vested in any person in accordance with any rule made or permission granted under section 4 of this Act, shall be presumed to be the property of the State.

Acts prohibited.

4. Except in accordance with rules published with the previous sanction of [4][the Government] in the Jammu and Kashmir Government Gazette, no person shall, within the territories of the Jammu and Kashmir State, take part in—

(*a*) the cultivation of Kuth,
(*b*) extraction of Kuth,
(*c*) the possession of Kuth,
(*d*) the transport of Kuth,
(*e*) the export of Kuth,
(*f*) the sale of Kuth,
(*g*) the manufacture of any substance or preparation containing Kuth.

Nothing in this section shall be deemed to prohibit any act done by permission in writing of the Conservator of Forests or other Forest officer authorised by him in this behalf.

Nothing in this Act to prohibit acts done by permission.

Penalties for acts in contravention of section 4.

5. (1) Whoever contravenes [5][or abets, or attempts, or connives at the contravention of] the provisions of section 4 of this Act shall, on conviction before a Magistrate, be punished for each such offence with imprisonment of either description for a term which may extend to 2 years or with fine which may extend to Rs. 5,000 or with both.

[6][(2) Whoever having been convicted of an offence punishable under sub-section (1) shall be guilty of any offence punishable under the said sub-section shall be subject for every such subsequent offence to imprisonment of either description for a term which may extend to four years or with fine

1. Definition of "Revenue officer" substituted *vide* Act VIII of 1988.
2. Substituted *vide* Act III of 2008 for "Wazirs".
3. Words "Safed Poshes" deleted *vide* Act III of 2008.
4. See footnote under sectfon 2.
5. In section 5(1) words in brackets inserted *vide* Notification 7-L/87 published in the Government Gazette dated 24th Magh, 1987.
6. Section 5(2) added and renumbared *vide* State Council Resolution No 81, dated 15th April, 1926, published in the Government Gazette dated 4th Sawan 1983.

which may extend to Rs. 10,000 or with both.]

[1][(3) If at the time of committing any Kuth offence or with a view to avoid arrest at any time after its commission, the offender uses any deadly weapon, the imprisonment with which he shall be punished may extend to 10 years.]

(4) Where a fine is imposed the Court may direct the offender to be imprisoned in default of payment of the fine for a term which may exted to one-fourth of maximum imprisonment provided for the affence and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

(5) Offences punishable under sub-section (1) shall be triable by a Magistrate of the 1st or 2nd class and under sub-section (2) or (3) by the Court of Sessions or a Magistrate of the first class.

[2][(6) All offences under this section shall be non-bailable.]

Presumption that unaccounted for Kuth is the Kuth in respect of which offence committed.

6. In prosecutions under section 5 it shall be presumed, until the contrary is proved, that all Kuth for which the accused person is unable to account satisfactorily is Kuth in respect of which he has committed an offence under such section.

Power to prevent commission of offence.

7. Every Forest officer, Police officer, Customs and Excise officer or Revenue officer, shall prevent and may interfere for the purpose of preventing the commission of any Kuth offence.

[3][**7-A.** (1) Any Forest officer or any other officer, specially appointed to protect Kuth from being smuggled, may arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the Kuth area, under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence under this Act ; or

(*b*) any person who is by repute a habitual thief of Kuth or a habitual receiver of stolen Kuth knowing it to be stolen, or who by repute habitually smuggles Kuth.]

1. Section 5(3) substituted *vide* Act VIII of 1988.
2. Sub-section (6) of section 5 added *vide* State Council Resolution Vo. LXVII dated 7th November, 1926, published in the Government Gazette dated 13th Poh 1983.
3. Section 7-A added *vide* Act VII of 1988.

Power to arrest without warrant.

8. When there is reason to believe that a Kuth offence has been committed, any Forest officer, Police officer, Customs and Excise officer or Revenue officer or other officer authorised by [1][the Government] in this behalf may without order from a Magistrate and without a warrant

(*a*) seize any Kuth, together with all deadly weapons, materials, tools, boats, carts and cattle believed to be used in committing any such offence ;

(*b*) detain, search or arrest any person against whom a reasonable suspicion exists of his being concerned in any Kuth offence. Every officer making any arrest under this section shall, without unecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer-in-charge of the nearest Police-station ;

(*c*) detain and search in any open place any cart pack animal or other conveyance which he has reason to believe to be used for carrying Kuth in respect of which a Kuth offence has been committed ;

[2][(*d*) enter and search any building, vessel or place in which he has reason to believe Kuth to be unlawfully kept or concealed or in case of resistance to break open any door or remove any other obstacle to such entry.

All warrants issued and all searches made under this section shall be executed or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure in force within the State.]

Application for confiscation.

9. Every officer seizing any property shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try offence on account of which the seizure has been made, provided that when the offender is unknown it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

10. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary, for the arrest and trial of the offender and the disposal of the property according to law.

1. See footnote under Section 2.
2. Clause (d) amended, words "requiring warrant" omitted *vide* Notification No. L/87-7 published in the Goverhment Gazette dated 24th Magh 1987.

11. All Kuth, in respect of which a Kuth offence has been committed and all deadly weapons, materials, tools, boats, carts and cattle used in committing any Kuth offence, shall be liable to confiscation. Such confiscation shall be in addition to any other punishment prescribed for such offence.

Confiscation of Kuth, tools, etc., when liable to confiscation.

12. When the trial of any Kuth offence is concluded any Kuth, in respect of which such offence has been committed, shall, if it is the property of the State or has been confiscated, be taken charge of by a Forest officer and in any other case may be disposed of in such manner as the Court may direct.

Disposal on conclusion of trial for forest offence of produce in which it was committed.

13. When the offender is not known, or cannot be found, the Maigstrate may, if he finds that a Kuth offence has been committed, order the Kuth in respect of which the offence has been committed to be confiscated and taken charge of by Forest officer or to be made over to the person whom the Magistrate deems to be entitled to the same :

Provided that no such order shall be made until the expiration of one month from the date of seizing the Kuth or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure when offender not known or cannot be found.

14. The officer who made the seizure under sectiona 8 or any of his official superiors, or any person claiming to be interested in the property so seized, may within one month from the date of any order passed under section 11, 12 or 13 appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable and the order passed in such appeal shall be final.

Appeal from orders under sections 11, 12 and 13.

15. When an order for the confiscation of any property has been passed under section 11 or 13, as the case may be, and the period limited by section 13 for an appeal from such order has elapsed and no such appeal has been preferred, or when on such appeal being preferred, the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in

Property when to vest in State.

the State free from all incumbrances.

Saving of power to release property seized.

16. Nothing hereinbefore contained shall be deemed to prevent any officer, empowered in this behalf by [1][the Government], from directing at any time the immediate release of any property seized under section 8.

Punishment for wrongful seizure.

17. Any officer who vexatiously and unnecessarily seizes any property, detains or searches any person, animal or conveyance, arrests any person, or enters and searches any building, vessel or place, on the pretence that the Kuth offence has been committed, shall be punished with imprisonment which may extend to 6 months or with a fine which may extend to Rs. 500 or with both.

Recovery of money due to State.

18. Any arrears of any sum due on account of royalty or other payment due to the State under this Act, or any rule made under this Act, may be recovered as if it were an arrear of land revenue.

Operation of other law not barred

19. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rule made under it or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act, provided that no person shall be punished twice for the same offence.

Applications of Act to other economic plants with sanction of Government.

20. With the previous sanction of [1][the Government], the provisions of this Act may be made applicable, by notification in the Jammu and Kashmir Government Gazette, to any other economic plant or plants.

Power to make rules.

[2][**21.** [3][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules, to prevent the illicit export of Kuth from the State.]

---

1. See footnote under section 2.
2. Section 21 added *vide* Noiification No. F/12 dated 5th December 1928 published in the Government Gazette dated 29th Magher, 1985.
3. In section 21 the words "the Government" substituted for the words "With the previous sanction of His Highness the Maharaja Bahadur, the Minister-in-charge of the Forest Department" *vide* Act X of 1996.

THE JAMMU AND KASHMIR TENANCY ACT, 1980
(1923 A. D.)
ACT No. II of 1980.

CONTENTS.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Title, extent and commencement.

2. Definitions.

CHAPTER II.

RIGHT OF OCCUPANCY.

Provisions applicable to the Jammu Province.

3. Grades of occupancy-tenants.

4. Grades of occupancy-tenants.

5. Repealed.

Provisions relating to Kashmir Province, Ladakh District and Gilgit District.

6. Classes of occupancy-tenants.

7. Enquiry regarding the rights of tenants at next Regular Settlement.

Provisions applicable to all districts

7-A. Tenants who may be declared occupancy-tenants on suit or otherwise.

8. Right of occupancy not to be acquired after completion of first Regular Settlement by mere length of occupancy.

9. Establishment of right of occupancy by virtue of local custom or usage or otherwise.

10. Occupancy right may be possessed in waste land.

11. Illegal ejectment no interruption of continuous possession under this Chapter and Chapter II-A.

12. Illegal ejectment no interruption of continuous possession under this Chapter.

13. Exclusion of certain classes of occupiers from acquisition of occupancy right.

14. Exclusion of co-sharer in joint holding from acquisition of right of occupancy.

15. Right of occupancy not to accrue in land leased to a *mustajir*.

CHAPTER II-A.

PROTECTED TENANTS.

15-A. Protected tenant.

15-B. Procedure for declaration as protected tenant.

15-C. Land exempted.

CHAPTER III.

RENTS.

Rents generally.

16. Respective rights of landlord and tenant to produce.

SECTION.

17. Commutation and alteration of rent.

17-A. Prohibition of enhancement of rent.

18. Payment for land occupied without consent of landlord.

19. Collection for rents of undivided property.

19-A. Land-lord bound to give receipt for rent received.

19-B. Procedure for recovery of rent.

Produce rents.

20. Presumption with respect to produce removed before division or appraisement.

21. Harvesting of crops where rent is taken by appraisement on failure of landlord to attend.

22. Where rent is taken by appraisement, power of landlord or tenant to require division of actual produce, and of Revenue officer to control appraisment.

23. Appointment of referee for division or appraisement.

24. Appointment of assessors and procedure of referee.

25. Produce after division or appraisement.

Provisions relating to suits for enhancement or reduction of rent, and proceedings for adjustment of rents on alteration of land revenue.

26. Regulation of enhancements and abatements.

27. Enhancement of rent of occupancy-tenants.

SECTION.

28. Enhancement of certain cash rents payable by occupancy-tenants.

29. Abatement of rent of occupancy-tenants.

30. Discretion as to extent of enhancement or reduction.

31. Time for enhancement or reduction to take effect.

32. Adjustment of rents proportionate to land revenue.

33. Adjustment of fixed cash rents at a general re-assessment.

34. Treatment of leases for period exceeding or equal to term of assessment of land revenue.

Remissions or Suspensions of Rent.

35. Remission of rent by Courts decreeing arrears.

36. Remission or suspension of rent, on remission or suspension of land revenue.

Deposits.

37. Power to deposit rent in certain cases with Revenue officer.

38. Effect of depositing rent.

Recovery of rent from attached Produce.

39. Recovery of rent from attached produce.

39-A. Recovery of arrears of rents as arrears of revenue.

39-B. Recovery of Court-fees chargeable on amount realised.

SECTION.

CHAPTER IV.

RELINQUISHMENT, ABANDONMENT AND EJECTMENT.

Relinquishment.

40. Relinquishment by tenant for a fixed term.

41. Relinquishment by any other tenant.

42. Relinquishment of part only of a tenancy.

Abandonment.

43. Abandonment of a tenancy by occupancy-tenant.

Ejectment : Liability to Ejectment.

44. Grounds of ejectment of occupancy-tenant.

45. Conditions for ejectment of tenant on ground of resumption for personal cultivation by landlord.

45-A. Consequences for failure to bring land under personal cultivation in the prescribed period.

46. Ejectment of tenant-at-will.

Procedure of ejectment.

47. Restriction on ejectment.

48. Ejectment for failure to satisfy decree for arrear of rent.

49. Ejectment in case of resumption for personal cultivation by landlord.

50. Omitted.

51. Power to make rules.

SECTION.

52. Tenant cannot be ejected from part only of a tenancy except at the instance of all the landlords.

53. Time for ejectment.

54. Award of compensation to landlord instead of ejectment.

55. Rights of ejected tenants in respect of crops and land prepared for sowing.

Relief for wrongful dispossession.

56. Relief for wrongful ejectment after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955.

57. Omitted.

57-A. Relief for wrongful ejectment before the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955.

57-B. Penalty for unlawful ejectment after restoration of possession under section 56 or section 57-A.

58. Power to alter dates.

58-A. Restriction on execution of decree or order.

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

Alienation.

59. Omitted.

60. Transfer of right of occupancy

61. Disallowance of transfer.

SECTION.

62. Extinction of right of mortgagee on extinction of tenancy.

63. Sale of right of occupancy in execution of decree.

64. Right and liabilities of transferee of right of occupancy.

65. Sub-letting.

65-A. Restrictions on transfer by landlords.

Irregular Transfers.

66. Irregular transfers voidable.

Succession.

67. Succession to right of occupancy.

68. Succession of appointed heir or *chela*.

68-A. Application of sections 67 & 68 to and nullity of transfers made by protected tenants.

CHAPTER VI.

DEFINITION OF AREA HELD IN RIGHT OF OCCUPANCY OR PROTECTED TENANCY.

69. Definition of right of occupancy or protected tenancy in part of tenancy.

69-A. Presumption against *khud-kasht* entries in revenue records.

CHAPTER VII.

IMPROVEMENTS AND COMPENSATION.

Improvements by landlords.

70. Improvements by landlords on tenancies of occupancy or protected tenants.

Improvements by tenants.

71. Title of occupancy or protected tenant to make improvements.

72. Title of tenants not having right of occupancy to make improvements.

73. Improvements made before commencement of this Act.

74. Improvements begun in anticipation of ejectment.

75. Tender of lease for 20 years to tenant to be a bar to right to compensation.

76. Liability to pay compensation for improvements to tenant, on ejectment or on enhancement of his rent.

77. Compensation for disturbance of clearing tenant.

Procedure in determining compensation.

78. Determination of compensation by Revenue Court.

79. Determination of compensation by Revenue officers.

80. Matters to be regarded in assessment of compensation for improvement.

81. Form of compensation.

82. Relief in case of ejectment before determination of compensation.

SECTION.

CHAPTER VIII.

JURISDICTION AND PROCEDURE.

Jurisdiction.

83. Revenue officers.

84. Applications and proceedings cognizable by Revenue officers.

85. Revenue Courts, and suits cognizable by them.

85-A Conferment of powers of Revenue officer.

86. Administrative control, appeal, review and revision.

Miscellaneous.

87. Procedure of Revenue Courts.

88. Procedure of Revenue Courts and officers.

89. Joinder of tenants as parties to proceedings relating to rent.

90. Payment into Court of money admitted to be due to third person.

91. Execution of decrees for arrear of rent.

92. Prohibition of imprisonment in execution of decree for arrear of rent.

93. Power to refer party to civil Court.

94. Power to refer to High Court of Judicature question as to jurisdiction.

95. Power of High Court of Judicature to validate proceedings under mistake as to jurisdiction.

96. Power to make rules.

CHAPTER IX.

EFFECT OF THIS ACT ON RECORDS-OF-RIGHTS AND AGREEMENTS.

97. Nullity of certain entries in records-of-rights.

98. Nullity of certain agreements contrary to this Act.

99. Saving of other agreements when in writing.

APPENDIX A.

APPENDIX B.

APPENDIX C.

Sec 1—25
40—49
56—58
67—68-A

THE JAMMU AND KASHMIR TENANCY ACT, 1980 (1923 A. D.)

Act No. II of 1980.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur in Conncil under Resolution No.* 16, *dated the* 13*th September*, 1923 *and published in the Government Gazette dated* 14*th Maghar*, 1980.]

An Act to consolidate, amend and declare the law relating to the tenancy of land in the Jammu and Kashmir State.

WHEREAS it is expedient to consolidate, amend and declare the law relating to the tenancy of land in Jammu and Kashmir State ; it is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. (1) This Act shall be called the Jammu and Kashmir Tenancy Act, 1980, and shall extend to the whole of the Jammu and Kashmir State [1][x x x].

Title, extent and commencement.

[2](2) It shall come into force on and from the 1st of Poh, 1980.

(3) From the date when this Act comes into force all circulars, rules and orders previously issued regarding matters dealt with therein, so far as they may be repugnant to it, shall be considered repealed :

But all orders issued, rights acquired, liabilities incurred, or things done under the circulars, rules and orders hereby repealed shall be deemed to have been respectively issued, incurred or done under this Act.

1. Saving clause to section 1 (1) repealed *vide* Revenue Department Notification No. S-50, published in the Government Gazette dated 20th Bhadon, 1987.

2. Sections 4 and 5 were enforced in such Tehsils of the Jammu Province as were under Settlement in 1914 or have come under Settlement since then, from the 1st October, 1914, and elsewhere in the Jammu Province from 1st of Assuj, 1980 (*vide* State Council Resolution No. VII dated the 2nd August, 1923, and Notification No. 16 dated the 19th Bhadon, 1980).

2. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "land" means land which is not occupied as the site of any building in a town or village, and is occuiped or has been let for agricultural purposes or for purposes sub-servient to agriculture or for pasture, and includes the site of buildings and other structures and trees standing on such land as well as areas covered by or fields floating over water, and sites of *jandars* and *gharat* :

Provided that, nothing in this Act shall apply to the site of any *jandar* or *gharat* attached to any canal under the management of the State Department of public Works, or any distributary thereof ;

(2) "rent" means whatever is payable to a landlord in money, kind or service by a tenant, on account of the use or occupation of land held by him or on account of the use of water for irrigation ;

(3) "pay" with its grammatical variations and cognate expressions, includes, when used with reference to rent, "deliver" and "render" with their grammatical variations and cognate expressions ;

(4) "arrears of rent" means rent which remains unpaid after the date on which it becomes payable ;

(5) "tenant" means a person who holds land, under the State, or under another person, and is, or but for a special contract in that behalf would be, liable to pay rent for that land, to the State or to that person ; but it does not include—

(*a*) an inferior land-holder, or

(*b*) a person to whom a holding has been transferred, or an estate or holding has been let on farm, for the recovery of an arrear of land revenue, or of a sum recoverable as such. or

(*c*) a mortgagee of the rights of a land holder,

[1](*d*) omitted.

(6) "landlord" means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land ;

(7) "tenant" and "landlord" include the predecessors and successors-in-interest of a tenant and landlord respectively ;

(8) "tenancy" means a parcel or parcels of land held by a tenant of a landlord under one lease or engagement or one set of conditions, but may comprise land held by a tenant

1. Clause (d) of secrion 2(5) omitted *vide* Act I of 1995.

partly in right of occupancy and partly without such right ;

(9) "improvement" means, with reference to a tenancy, any work which is suitable to the tenancy and consistent with the purpose for which it is held, by which the value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it :

EXPLANATION I.—It includes, among other things—

(*a*) the construction of tanks, wells, water-channels and other works for the storage or supply or distribution of water for agricultural purposes ;

(*b*) the construction of works for the drainage of land or for protection of land against floods or from erosion or other damage by water ;

(*c*) the planting of trees, the reclaiming, clearing, enclosing, levelling and terracing of land for agricultural purposes, and other works of a like nature ;

(*d*) the erection of buildings on the tenancy, or in its immediate vicinity, elsewhere than on the village site, required for the more convenient or profitable use or cultivation of a tenancy ; and

(*e*) the renewal or reconstruction of any of the foregoing works, or such alteration therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value ;

but it does not include such clearances, enbankments, levelling, enclosures, temporary wells, and water-channels or other works, or petty alterations or repairs to such works, as are made by tenants in the ordinary course of cultivation and without any special expenditure, or any other benefit; accruing to land from the ordinary operation of husbandry ;

EXPLANATION II.—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement :

EXPLANATION III.—Unless made with the written consent of the landlord, any work that substantially diminishes the value of any other part of the landlord's property, is not an improvement ;

(10) "estate", "land-holder", [1][× × ×], "holding", "land revenue", "arrear of land revenue", "defaulter", "rates and cesses", "village-cesses", "village-officer", "Revenue officer",

1. Words "Assami or malgauzar" in clause 10 deleted *vide* Act I of 1995 and word "Chakdar" deleted *vide* Act XIII of 1996.

"*muafidar*", "agricultural year", "notification", "encumbrance", and "date of regular Settlement" have the meanings assigned to those words in [1]the Jammu and Kashmir Land Revenue Act, 1980 ;

[2][(11) "land revenue" means land revenue assessed, or assessable, under any law or orders for the time being in force, whether payable to the State or assigned by the State to other person ; also any sum payable in respect of land, by way of quit-rent or of commutation for service, to the State or to a person to whom the State has assigned the right to receive the payment :

it also includes any rate imposed in respect of the increased value of land due to irrigation, but does not include any fluctuating *abiana* imposed in addition to the fixed assessment on account of crops matured by means of irrigation, except in so far as such *abiana* may be declared by notification issued by the Government in that behalf, to be a rate imposed in respect of the increased value of the land due to irrigation ;

[(12) "*abi* land" means all irrigated lands and for purposes of section 16, includes such dry lands as grow sugarcane, wheat, maize and linseed.]

CHAPTER II.

RIGHT OF OCCUPANCY.

Part I.—Provisions applicable to the Jammu Province.

Grades of occupancy tenants.

3. (1) There shall be the following grades of occupancy tenants :—

(*a*) occupancy-tenants of grade A, holding land direct from a land-holder, or from the State ;

(*b*) occupancy-tenants of grade B, holding land from occupancy-tenants of grade A.

(2) No tenant holding land from an occupancy tenant of grade B shall be entitled to right of occupancy :

Provided that, any person recorded in a record-of-rights, sanctioned before the date on which this Act comes into force, as possessing a right of accupancy subordinate to a

1. Land Revenue Act XII of 1996.
2. Clause (12) inserted *vide* Act VII of 2005.

tenant of grade B shall, until the next general re-assessment of the district or tehsil in which the tenancy is situate, retain such right of occupancy, and shall, as far as may be, be subject to all the provisions of this Act relating to occupany-tenants :

Provided further that, at the next general re-assessment of the tract in which the tenancy is situate, the right and liabilities, to which such tenants shall be subject after the date of the re-assessment, shall be determined by rules to be issued in this behalf by the [1][Government].

4. At the next Regular Settlement made in any tract after the date on which this Act comes into force, the classification of the occupancy tenants in force at that date as described in Part I of Appendix A of this Act, shall be revised, in every estate, by a Revenue Officer not below the rank of Tehsildar, and all tenants already recorded as possessing a right of occupancy shall be assigned according to the length of their respective tenancies to one of the following classes, namely :—

Class 1.—Tennants whose possession of their tenancies began in or before the Samvat year 1928 ;

Class 2.—Tenants whose possession began after the Samvat year 1928, but not later than the Samvat year 1935 ;

Class 3.—Tenants whose possession began after the Samvat year 1935, but not later than the Samvat year 1950 ;

Class 4.—Tenants whose possession began after the Samvat year 1950.

Tenants of grade B, as described in section 3 of this Act, shall be recorded as such, under the appropriate clause of this section.

[2]**5.** Repealed.

Part II.—Provisions applicable to Kashmir Province, Ladakh District and Gilgit District.

Classes of occupancy tenants.

6. The tenants entitled to a right of occupancy under any rules or orders in force at the date on which this Act takes effect, as described in Part II of Appendix A of this Act, and tenants who may hereafter become entitled to such right, shall be recorded as

1. In section 3 (2) "Government" substituted for "Revenue Member with the sanction of His Highness the Maharaja Sahib Bahadur-in Council" *vide* Act XIII of 1996.
2. Section 5 repealed *vide* Act I of 2007 (For earlier amendment of section 5 see Act XIII of 1996).

kashtkar mustaqil of one of the following classes, namely : –

In the Province of Kashmir.

Class 1.—Tenants whose possession of their tenancies began in or before the Samvar year 1937 ;

Class 2.—Tenants whose possession began after the Samvat year 1937, but not later than the Samvat year 1951 ;

Class 3.—Tenants whose possession began after the Samvat year 1951, but not later than the Samvat year 1963 ;

Class 4.—Tenants whose possession began after the Samvat year 1963 :

Provided that in the twelve districts of the city of Srinagar, namely :—

Narsinghgarh,
Habakadal,
Maharaj Ranbirganj,
Tashawan,
Khanayar,
Rainawari,
Nawakadal,
Mahisum,
Kothi Bagh,
Chattabal,
Sangin Darwaza,
Nauhatta,

[1][x x x] no tenant shall enjoy a right of occupancy under this Act, unless such tenant on or before the 8th day of Katik, 1975—

(*a*) had been recorded as, or had been declared to be, an occupancy-tenant, or

(*b*) having instituted a suit for a right of occupancy, or in a suit pending at that date having claimed such right, is declared by a competent Court to be an occupancy tenant, or unless

(*c*) the landlord of the tenancy consents to the tenant receiving a right of occupancy.

In the Districts of Ladakh and Gilgit.

Class 1.—Tenants whose possession of their tenancies began in or before the Samvat year 1942 ;

Class 2.—Tenants whose possession began after the Samvat year 1942, but not later than the Samvat year 1951 ;

1. In section 6 class (4) the words "notwithstanding anything to the contrary in the Tenancy Rules heretofore in force" deleted *vide* Act XIII of 1996.

Class 3.—Tenants whose possession began after the Samvat year 1951, but not later than the Samvat year 1965;

Class 4.—Tenants whose possession began after the Samvat year 1965.

Enquiry regarding the rights of tenants at next Regular Settlement

7. (1) At the next Regular Settlement made in any tract, after the date on which this Act comes into force, a Revenue Officer not below the rank of Tehsildar shall make enquiry in every estate regarding the status of all tenants holding land therein.

(2) The Revenue Officer shall, by his order, determine the tenants, who are entitled to a right of occupancy and shall direct the entry of every tenant so entitled under the appropriate class of section 6 of this Act.

Part III.—Provisions applicable to all districts.

Tenants who may be declared occupancy-tenants on suit or otherwise.

[1][**7-A.** (1) On the application of the tenant, and with the consent of the landlord or on suit preferred before a competent Revenue Court, notwithstanding anything to the contrary in the Tenancy Rules heretofore in force, a tenant—

(*a*) who was in possession of land in the Samvat year 1935 in the Jammu Province, or in the Samvat year1937 in the Kashmir Province, or in the Samvat year 1942 in the Districts of Ladakh and Gilgit, or

(*b*) who owned land and has ceased to be landowner thereof (otherwise than by forfeiture to the State for disloyalty, or by the order of criminal Court, or by any voluntary act), or

(*c*) who is an *Udharach* tenant in the Kathua District and was recorded as tenant of any land at the first Regular Settlement, or

(*d*) who, at the first Regular Settlement was entitled to a right of occupany in any land under the rules or orders at that time in force, but was erroneously recorded as tenant-at-will,

may be declared to be an occupancy tenant thereof of the appropriate class under section 4 or section 6 of this Act:

Provided in the case of a suit under this sub-section that such tenant has since held continuous possession of the land up to one year before the date on which the suit is instituted.

(2) Except as provided in sub-section (1) of this section

1. Section 7-A inserted *vide* Act I of 2007.

nothing in the foregoing sections of this Act shall be deemed to confer on a tenant a right of occupancy to which such tenant was not entitled under the Tenancy Rules heretofore in force.

(3) On the application of the landlord or of the tenant, a tenant on whom the landlord, with the permission in writing of a Revenue Officer duly empowered in this behalf, has voluntarily agreed to confer a right of occupancy, shall be declared to be occupancy-tenant thereof of class 4 under section 4 or section 6 of this Act.]

Right of occupancy not to be acquired after completion of first Regular Settlement by mere length of occupancy.

8. Except as provided in [1][section 7-A] of this Act, a tenant, who, at the date of the first Regular Settlement of the tract in which the tenancy is situated, was not entitled under this Act to a right of occupancy as regards such tenancy, shall not subsequently acquire such right by mere length of possession.

Establishment of right of occupancy by virtue of local custom or usage, or otherwise.

9. Nothing contained in this Act, shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in the foregoing sections.

Occupancy right may be Possessed in waste land.

10. A right of occupancy may be possessed by tenants under this Act in respect of areas of waste land :

Provided that, no such right shall be acquired in respect of grazing grounds included in the area of any State forest, *dhars*, or other public grazing ground.

Illegal ejectment, no interruption of continuous possession under this Chapter.

11. Tenancies interrupted by ejectment contrary to the provisions of this Act or by refusal on the part of the landlord to allow re-entry of a tenant entitled to possession, shall be held for the purposes of this Chapter [2][x x x] to be continuous.

12. Exchanges by tenants, whether voluntary or otherwise, and

alterations in the site of a *jandar* or *gharat* owing to a change in the course of a stream,

1. Substituted *vide* Act I of 2007 for "section 5".
2. Words "and Chapter II-A" omitted *vide* Act XII of 1955 (For earlier amendments see Act I of 2007.)

shall not be deemed to be breaches of continuous possession for the purposes of this Chapter :

Provided that, a tenant shall not be entitled to a right of occupancy in the land relinquished by him owing to such exchange or alteration of site.

Exclusion of certain classes of occupiers from acquisition of occupancy-right.

13. Nothing contained in this Act shall be deemed to confer a right of occupancy on —

(*a*) a village menial, in respect of land held by him solely in remuneration for the customary service rendered by him to the village community ;

(*b*) [1][Omitted]

(*c*) the attendant of any shrine or religious institution, in respect of land held by him from such shrine or institution in consideration of his services rendered thereto ;

(*d*) hired labourers, who are paid by the landholder for their labour either in cash or in kind or both, or by a share of the produce of the land cultivated by them in respect of such land ;

(*e*) tenants cultivating land in gardens or orchards in respect of such land ;

[2][(*f*) chowkidars of the Forest Rest Houses cultivating land within the demarcated forest boundary in lieu of or in addition to the monthly salary for service rendered to the department.]

Exclusion of co-sharer in joint holding from acquisition of right of occupancy.

14. No co-sharer in the village common land, or in any joint-holding, shall acquire a right of occupancy in land comprised in such village common or joint holding as against the other co-sharers therein.

Right of occupancy not to accrue in land leased to a *mustajir*.

15. No person shall be competent to acquire in a tenancy a right of occupancy, not previously subsisting therein, when and so long as the rights of the landlord in regard to such tenancy are mortgaged, with possession, by the landlord to any other person, or the land is leased to a *mustajir*.

---

1. Clause (*b*) omitted *vide* Act XII of 1955.
2. Clause (*f*) added *vide* Act VII of 1991.

CHAPTER II-A.

PROTECTED TENANTS.

[1][**15-A.** (1) All tenants other than occupancy tenants and such fixed term tenants as hold *maliari* or vegetable growing land shall be deemed to be protected tenants and recorded as such in respect of such land as is held by them in their cultivating occupation at the time of the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955: 1965

Protected tenants.

Provided that, the right of protected tenancy of a tenant shall cease when a landlord resumes land for personal cultivation under section 49 of the Act :

Provided further that, the right of protected tenancy of a tenant holding under a lessee or a mortgagee, shall also cease on the expiry of the lease or mortgage, as the case may be, if the lessor or the mortgagor was in self cultivating occupation of such land immediately before such land was leased or mortgaged and such land including the other land in his personal cultivation does not exceed the size of the holding specified for a landlord in clause (a) of section 45 of the Act.

(2) Notwithstanding anything contained in Chapter IV of the Land Revenue Act, 1996, the recording of the right of a protected tenant under sub-section (1) shall be made by an entry in the quadrennial *Jamabandi* prepared immediately after coming into force of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, in such manner as may be notified by the Government in this behalf.]

[2][**15-B.** (*i*) Any tenant who is entitled to a right of protected tenancy but is not entered as such may make an application for being declared and entered as a protected tenant within one year of the attestation of the quadrennial *Jamabandi* of the village in which such land is situate prepared immediately after coming into force of the Jammu and Kashmir Tenancy (Amendment) Act 1955. 1965

Procedure for declaration as protected tenant.

(*ii*) Notice of every application presented by a tenant under sub-section (*i*) shall be given to the landlord and no

1. Section 15-A substituted *vide* Act XII of 1955. (For earlier amendments see Acts VII of 2005 and I of 2007.)

2. Section 15-B substituted *vide ibid.* (For earlier amendments see Acts VII of 2005 and I of 2007.)

order shall be made on such application unless the landlord has been given an opportunity to be heard,

(*iii*) On an application by a landlord or a tenant, a tenant may be declared a protected tenant and recorded as such, if the landlord has agreed to confer on him the right of protected tenancy.]

[1][**15-C**. Nothing in section 15-A shall apply to —

Land exempted.

[2][(*i*) *khalsa* and other lands owned by the State excepting those acquired by the State in exchange with private lands held in ownership right before or after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955;]

(*ii*) pasture grounds (*Kahcharai areas*) recorded in the village papers ;

(*iii*) lands situated within the limits of any cantonment;

(*iv*) lands included within railway or canal boundaries ;

(*v*) lands belonging to a municipality or town area or in possession of any State Department ;

[3](*vi*) Omitted.

(*vii*) lands in gardens or orchards ;

(*viii*) lands held by the chowkidars of the Forest Rest Houses within the demarcated forest boundary for service rendered to the Forest Department ;

[4](*ix*) Omitted.

[3](*x*) Omitted.

[5][(*xi*) lands situate within the limits as these exist at the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, of a municipality or a notified area and lands within the limits of such town areas as may be declared by the Revenue Minister by a notification in the Government Gazette ;]

[6](*xii*) Omitted.]

---

1. Section 15-C inserted *vide* Act VII of 2005.
2. Clause (i) of section 15-C substituted *vide* Act XII of 1955.
3. Clauses (vi) and (x) of section 15-C deleted *vide ibid*.
4. Clauses (ix) of section 15-C deleted *vide* Act I of 2007.
5. Clause (xi) substituted *vide* Act XII of 1955.
6. Clause (xii) of section 15-C deleted *vide ibid*.

CHAPTER III.

RENTS.

Rents generally.

16. (1) The rent for the time being payable in respect of a tenancy shall be the first charge on the produce thereof.

Respective rights of landlord and tenant to produce.

[1][(1-*a*) Where the extent of cultivated land of any class other than *maliari* comprised in a tenancy or tenancies of one landlord or each of the co-sharing landlords, as the case may be, is more than one hundred *kanals*, the maximum rate of rent payable by the tenant, shall, notwithstanding any agreement, usage, decree or order of a Court or anything to the contrary in the Act, not exceed for *abi* lands in the case of a produce rent $\frac{1}{4}$th of the produce and in case of a money rent $\frac{1}{4}$th of the value of such produce, and for *khushki* lands in the case of a produce rent $\frac{1}{3}$rd of the produce and in case of money rent $\frac{1}{3}$rd of the value of such produce :

Provided that, no share of fodder of a grain-bearing crop as part of such rent shall be payable by the tenant in cases where the landlord does not provide him with seed, implements and cattle for purposes of cultivation :

Provided further that, this [2](sub-section) shall not apply for such period and to such areas affected by Pakistani raids or communal riots as may be specified by the Revenue Minister by a notification in the Jammu and Kashmir Government Gazette :]

[3][Provided also that, this sub-section shall not apply to—

(*a*) lands on which saffron is grown but have not been assessed to revenue during the last settlement ; and

(*b*) such other Government lands as the Government may, by a special or general order, exempt from the operation of this sub-section.]

[4][(1-*b*) Except as provided for in sub-section (1-*a*) a tenant shall not be liable to pay for a tenancy rent exceeding

1. Sub-section(1-*a*)inserted *vide* Act VII of 2005.
2. Substitued "*vide* Act I of 2007 for "section".
3. Proviso added *vide* Act I of 2007.
4. Sub-section (1-*b*) added *vide* Act I of 2007.

in case of a produce rent ½ of the produce and in case of a money rent ½ of the value of such produce.]

(2) A tenant shall be entitled to tend, cut, and harvest the produce of his tenancy in due course of husbandry, without any interference on the part of his landlord.

(3) Except where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(4) Where rent is taken by division of the produce—

(*a*) the tenant shall be entitled to the exclusive possession of the whole produce until it is divided ;

(*b*) the landlord shall be entitled to be present at, and take part in, the division of the produce: and

(*c*) when the produce has been divided, the landlord shall be entitled to the possession of his share thereof.

Commutation and alteration of rent.

17. (1) Where rent is taken by any of the following methods, namely :—

(*a*) by division or appraisement of the produce,

(*b*) by rates fixed with reference to the nature of the crops grown,

(*c*) by a rate on a recognized measure of area,

(*d*) by a rent in gross on the tenancy, or

(*e*) partly by one of the methods specified in clauses (*a*), (*b*) and (*c*) of this sub-section and partly by another or others of them,

one of those methods shall not be commuted in whole or in part into another without the consent of both landlord and tenant.

(2) [1][Subject to the provisions of sub-sections (1-*a*) and (1-*b*)] of the foregoing section, in the absence of a contract or a decree or order of competent authority to the contrary, a tenant, whose rent is taken by any of the methods specified in sub-section (1), shall not be liable to pay for a tenancy rent at any higher rate, or of a higher amount, as the case may be, than the rate or amount payable in respect of the tenancy for the last preceding agricultural year in which rent was payable for the tenancy.

1. Substituted *vide* Act I of 2007 for "Subject to the provisions of sub-section (1-a)". (For earlier amendment see Act VII of 2005.)

[1][**17-A.** Nothing in sections 16 and 17 of this Act shall be construed to permit the existing rent to be enhanced where such rent is less than the maximum prescribed in sub-sections (1-*a*) and (1-*b*) of section 16.]

Prohibition of enhancement of rent.

18. Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable.

Payment for land occupied without consent of landlord.

19. When two or more persons are landlords of a tenant in respect of the same tenancy, the tenant shall not be bound to pay part of the rent of his tenancy to one of those persons and part to another.

Collection of rents of undivided property.

[2][**19-A.** (*i*) A landlord shall be bound to give his tenant a receipt for the rent paid by him.

Landlord bound to give receipt for rent received.

(*ii*) Any landlord who refuses to give to the tenant on demand a receipt for the rent paid by him, shall on an application made by the tenant to a Revenue Officer, be liable to a fine not exceeding Rs. 50 :

Provided that, no order shall be made against the landlord unless he has been given an opportunity to be heard.

19-B. (1) Where a tenant fails to pay rent due to a landlord, the landlord may apply to a Revenue Officer for realization thereof.

Procedure for recovery of rent.

(2) Notwithstanding anything to the contrary contained in the Limitation Act, 1995, or any other law for the time being in force, an application under sub-section (1) shall be made within a period of six months from the date the rent falls due :

Provided that, an application for realization of rent fallen due at the time the Jammu and Kashmir Tenancy (Amendment) Act, 1955, comes into force may be made within six months of the date of the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, or within the period prescribed by the Limitation Act, 1995, for

1. Section 17-A Inserted *vide* Act I of 2007.
2. Sections 19-A and 19-B added *vide* Act XII of 1955.

suits for arrears of rent, whichever period expires first,

(3) An order for recovery of rent passed by a Revenue Officer on an application made under sub-section (2) shall be deemed to be a decree of a Court and executed in the manner provided in the Code of Civil Procedure, 1977.

(4) All suits for arrears of rent pending on the date the Jammu and Kashmir Tenancy (Amendment) Act, 1955 comes into force shall be triable as applications made under sub-section (2).

(5) Where the rent due is for more than one harvest the Revenue Officer, in cases where such rent pertains to the period before the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, shall, and in cases where the rent pertains to the period after the commencement of Jammu and Kashmir Tenancy (Amendment) Act, 1955, may order its payment in instalments extending over a period of not more than three years in cases where $\frac{1}{4}$th of the produce is payable as rent and not more than six years in cases where half of it is so payable.

(6) Where an application by a landlord for recovery of rent under this section is dismissed and the Revenue Officer by whom the application is heard is satisfied that the claim preferred by the landlord was false and either frivolous or vexatious, the Revenue Officer may direct that compensation to such amount not exceeding rupees fifty be paid by the landlord to the tenant :

Provided that, no such order shall be made against the landlord unless he has been given an opportunity to be heard.]

Expl. — *Produce rent*

20. Where rent is taken by division or appraisement of the produce, if the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due division or appraisement thereof, or deals therewith in a manner contrary to established usage, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

Presumption with respect to produce removed before division or appraisement.

21. Where rent is taken by appraisement of produce—

Harvesting of crops where rent is taken by appraisement on failure of landlord to attend.

(1) if the landlord fails to attend either personally or by agent, at the proper time for making the appraisement, the tenant may give him, or his accredited agent, notice, orally or in writing, to attend within three days in order to make the appraisement ;

(2) if the landlord, or his agent, notwithstanding the receipt of such notice, neglects to attend within three days of its receipt, the tenant shall be entitled to cut and harvest the produce of his tenancy and shall be entitled to exclusive possession of the whole produce until it is divided ;

(3) when the produce of a tenancy has been cut under sub-section (2), the landlord shall take the rent for that harvest by division of the actual produce and not by appraisement.

22. Where rent is taken by appraisement of the produce—

Where rent is taken by appraisement, power of landlord or tenant to require division of actual produce, and of Revenue Officer to control appraisement.

(1) if the landlord, or the tenant, does not agree to the amount fixed by appraisement at any harvest, he may require that the rent shall be taken for that harvest by division of the actual produce, and not by appraisement ; and may, if the other party neglects or refuses to make such division, apply to [1][a Revenue Officer] for the appointment of a referee under section 23 of this Act ;

(2) a Revenue Officer [2][x x x x x] for reasons to be recorded by him may, of his own motion, order the appointment of a referee to make the appraisement under section 24 of this Act, or may require the appraisement to be made in his own presence ;

(3) a Revenue Officer issuing an order under sub-section (2) shall cause notice to be issued to the landlord and the tenant not to proceed with the appraisement, except in his presence, or in the presence of the referee, as the case may be ;

(4) any person failing to comply with a notice or order issued to him under sub-sections (2) and (3) of this section

1. In sections 22 (1), 23, 37 (b) and 41 the words "a Revenue officer" substituted for the words "Assistant Collector of the second class" *vide* Act III of 2008.

2. The words "not below the rank of Assistant Collector of the second class' omitted *vide* Act III of 2008. (For earlier amendment see Act XIII of 1996).

shall be liable by the order of the '[Revenue Officer] to a fine not exceeding fifty rupees, in respect of each tenancy to which such notice or order related.

Appointment of referee for division or appraisement.

23. If either the landlord or the tenant neglects to attend either personally or by agents, at the proper time for making the division or appraisement of the produce, or if [2][there is a dispute or likelihood of a dispute] about the division or appraisement, [3][a Revenue Officer] may, on the application of either party [4][or *suo motu*], appoint such person as he thinks fit to be a referee to divide or appraise the produce.

Appointment of assessors and procedure of referee.

24. (1) When a Revenue Officer appoints a referee under the last foregoing section he may, in his discretion, give him instructions with respect to the association with himself of any other persons as assessors, the number, qualifications, and selections of those assessors, and the procedure to be followed in making the division or appraisement.

(2) The referee so appointed shall make the division or appraisement, in accordance with any instructions which he may have received from the Revenue Officer under the last foregoing sub-section.

(3) Before making the division or appraisement the referee shall give notice to the landlord and the tenant of the time and place at which the division or appraisement will be made, but, if either the landlord or the tenant fails to attend either personally or by agent, the referee may proceed *ex-parte*.

(4) For the purpose of making the division or appraisement, the referee with his assessors, if any, may enter upon any land on which or into any building in which the produce is.

Procedure after division or appraisement.

25. (1) In the case of a division of the produce, if the parties agree to the award, the division shall be made accordingly. If the parties do not agree to such division, and all cases in which the rent is payable by appraisement, the referee shall make an estimate of the value of the produce, and shall submit the record with a report of his proceedings to the Revenue Officer.

1. Substituted for "Tehsildar" *vide* Act III of 2008 (For earlier amendment see Act XIII of 1996).
2. Substituted *vide* Act I of 2007 for "there is a dispute".
3. See footnote under section 22 (1).
4. Added *vide* Act I of 2007.

(2) The Revenue Officer shall consider the record, and, after such further enquiry, if any, as may deem necessary, shall make an order either confirming or varying the division or appraisement.

(3) The Revenue Officer shall also make such order as to the cost of the reference as he thinks fit.

(4) The cost may include the remuneration of the referee and of the assessors, if any, and may be levied from the applicant before the appointment of the referee, subject to the adjustment at the close of proceedings.

Provision relating to suits for enhancement or reduction of rent, and proceeding for adjustment of rents on alteration of land revenue.

26. (1) The rent of an occupancy-tenant shall be liable to enhancement or abatement only—

Regulation of enhancements and abatements.

(*a*) by registered agreement, or

(*b*) by decree or order of a Revenue Court, and, when so enhanced or abated, shall not again be liable to enhancement or abatement except on the grounds specified in clauses (*b*) and (*c*) of section 27 or in section 29, until or unless—

(*i*) ten years or such longer period as may have been agreed upon, decreed or ordered since rent was commuted under section 17, has elapsed, or

(*ii*) the estate in which the tenancy is situated has come under revision of assessment.

(2) Where the rent has been varied merely on the ground of any increase or decrease in area under clause (*c*) of section 27 or clause (*b*) of section 29, such variation shall not be considered in computing the period of ten years,

(3) The term for which the rent of an occupancy-tenant is fixed by decree or order of a Revenue Court shall not be less than ten years, but no term in excess of ten years shall be so fixed, except upon agreement by the parties

27. The landlord of an occupancy-tenant may sue for enhancement of rent on one or more of the following grounds and no others :—

Enhancement of rent of occupancy tenants.

(*a*) that the rate of rent paid by such tenant is below the prevailing rate paid by the occupancy-tenants of the same class for land of similar quality and with similar advantages in the neighbourhood ; or

(*b*) that the productive powers of the land held by the tenant have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the tenant ; or

(*c*) that the area of the tenancy has been increased by alluvion or by the tenant's encroachments :

Provided that, the rent of an occupancy-tenant of the description mentioned in section 28 of this Act shall not be enhanced under this section.

Enhancement of certain cash rents payable by occupancy-tentant.

28. (1) Where a tenant having a right of occupancy pays his rent entirely by a cash rate consisting of the whole or a share of the land revenue of the tenancy with or without an addition in cash proportionate to the amount of such land revenue, that rent may be enhanced on the ground that deduction therefrom of the land revenue with rates and cesses chargeable on the tenancy, it is—

(*i*) in the case of tenants of class 1 of sections 4 and 6, less than two annas per rupee of the amount of the land revenue ; or

(*ii*) in the case of tenants of class 2 of sections 4 or 6, less than four annas per rupee of the amount of the land revenue ; or

(*iii*) in the case of tenants of class 3 of sections 4 and 6, less than six annas per rupee of the amount of the land revenue ; or

(*iv*) in the case of tenants of class 4 of sections 4 and 6, less than eight annas per rupee of the amount of land revenue :

Provided that, in the Tehsils of Samba and Ranbirsingh-pora, and in any other local areas to which this proviso may hereafter be extended by the order of the Government, the rates specified in clauses (*i*) and (*ii*) of this sub-section may be increased to amounts not exceeding four and five annas respectively per rupees of the land revenue.

(2) In the case specified in sub-section (1) of this section, the rent payable by an occupancy-tenant of grade B may also be enhanced on the ground that after deduction therefrom of the rent payable by the tenant of the grade A to the land-holder, it is less than two annas per rupee of the amount of the land revenue, or exceeds by less than 2 annas per rupee of the land revenue, the rent which would have been payable if the tenant had been a tenant of the same class of grade A.

(3) In cases to which sub-sections (1) and (2) apply,

the rent may be enhanced to an amount not exceeding "two, four, five, six," or eight annas per rupee of the amount of the land revenue of the tenancy, as the case may be, in addition to the amount of the land revenue of the tenancy and the rates and cesses chargeable thereon.

(4) The rent of an occupancy tenant may be fixed or enhanced with regard to the provisions of this section in any of the proceedings hereinafter mentioned, and not otherwise—

(*a*) on suit for enhancement of rent by the landlord of the tenancy, or

[1][(*b*) Omitted.]

(*c*) on the application of either the landlord or the tenant, in any other suit by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right.

Abatement of rent of occupancy tenants.

29. An occupancy tenant may sue for abatement of rent on one or more of the following grounds and on no other :

(*a*) that the productive powers of land held by the tenant have been decreased by any cause beyond his control during the currency of the present rent ; or

(*b*) that the area of his tenancy has been decreased by diluvion or by encroachments, or by the taking up of the land for a public purpose, or for a work of public utility.

Discretion as to extent of enhancement or reduction.

30. In enhancing or reducing the rent of any land, under the foregoing provision of this Chapter, the Court shall, within the limits prescribed by those provisions, enhance or reduce the rent to such an amount as it considers fair and equitable but shall not, in any case, fix the rent at a sum less than the amount of the land revenue of the land and the rates and cesses chargeable thereon.

Time for enhacement or reduction to take effect.

31. (1) Unless the Court decreeing an enhancement of rent otherwise directs, the enhancement shall take effect from the commencement of the agricultural year next following the date of the decree.

(2) A Court decreeing a reduction of rent shall specify in the decree the date on and from which the deduction is to take effect.

1. Clause (b) of section 23 omitted *vide* Act XII of 1955.

Adjustment of rent proportionate to land revenue.

32. (1) Where the rent of a tenancy is the whole or a share of the land revenue thereof, with or without any addition in money, kind, or service, and the land revenue of the holding in which the tenancy is situate is altered, a Revenue Officer having authority to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situated shall determine, also the amount of the land revenue of the tenancy or proportionate share thereof, payable by the tenant as rent.

(2) Where an addition referred to in sub-section (1) is a percentage fixed with reference to the land revenue of the tenancy or the whole or a share of the rates and cesses chargeable thereon, or both, the Revenue Officer shall, in like manner, from time to time, alter the amount of the addition in proportion to any alteration of such land revenue or rates and cesses.

(3) The sum or sums determined under the foregoing sub-section, together with any other addition previously payable, shall be the rent payable in respect of the tenancy, until there is again an alteration of the land revenue thereof or the rate and cesses chargeable thereon, or until the rent is enhanced by a suit under this Act.

(4) An alteration of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

Adjustment of fixed cash rent at a general re-assessment.

33. (1) Where the rent of tenancy is neither of the kind described in section 32 nor a share of the gross produce, nor a rent fixed for a term of years, but is a fixed amount in cash or in kind, a Revenue Officer having authority to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situated, shall enquire into and may by his order revise the amount of such rent.

(2) In revising the rent of a tenancy under-sub-section (1) the Revenue Officer, subject to the general provisions of this Act in regard to the enhancement or abatement of rents, shall have regard especially to the amount by which the land revenue and cesses assessed on the tenancy have been increased or diminished since the rent is fixed.

34. (1) Where a lease has been granted, or an agreement has been entered into, by a land-holder in respect of any land assessed to land revenue, fixing for a period exceeding the term for which the land revenue has been assessed, the rent or other sum payable in respect of the land under the lease or agreement, and that term has expired, the lease or agreement shall be voidable—

Treatment of leases for period exceeding or equal to term of assessment of land revenue.

(*a*) at the option of the land-holder if the land revenue of the land has been enhanced, and the person to whom the lease has been granted, or with whom the agreement has been entered into, refuses to pay such rent or other sum as a Revenue Court, on the suit of the land-holder, determines to be fair and equitable ; and

where the relation of landlord and tenant exists between the grantor and grantee of the lease, or between the persons who entered into the agreement—

(*b*) at the option of the tenant if the land revenue of the land has been reduced and the landlord refuses to accept such rent as a Revenue Court, on the suit of the tenant, determines to be fair and equitable.

(2) Any agreement relative to the occupation, rent, profits or produce of any land which has been entered into for the term of the currency of an assessment shall, unless a contrary intention clearly appears in the agreement, or the agreement is terminated by consent of parties or course of law, continue in force uptil a revised assessment takes place.

Remissions or Suspensions of Rent.

35. Notwithstanding anything in the foregoing sections of this Chapter, if it appears to a Court making a decree for an arrear of rent that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof has been so diminished by drought, hail, deposit of sand, flood or other like calamity, that the full amount of rent payable by the tenant be equitably decreed, the Court may allow such remission from the rent payable by the tenant as may appear to it to be just.

Remission of rent by Courts decreeing arrears.

36. (1) Whenever the payment of the whole or any part of the land revenue payable in respect of any land is remitted or suspended, [1][a Revenue Offcer] may, if the rent is payable in cash, or rent is payable in kind of

Remission or suspension of rent, on remission or suspension of land revenue.

1. Substituted *vide* Act III of 2008 for "an Assistant Collector of the 1st class". (For earlier amendment see Act XIII of 1996.)

which the amount is fixed, by order, remit or suspend, as the case may be, payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land, as the land revenue of which payment has been remitted or suspended, bears to the whole of the land revenue payable in respect of the land :

Provided that, in the case of an occupancy-tenant, whose rent is of the nature hereinbefore in this sub-section described, the remission or suspension of the land revenue payable in respect of his land shall, in the absence of a written order by a Revenue Officer to the contrary, carry with it a proportionate remission or suspension, as the case may be, of his rent.

(2) When the payment of the rent of any land has been suspended under this section it shall remain under suspension until the [1][Collector] orders the revenue of that land to be realized.

(3) An order passed under sub-sectian (1) shall not be liable to be contested by suit in any Court.

(4) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or during the period of suspension of any rent of which the payment has been suspended.

(5) Where the payment of rent has been suspended, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(6) If the landlord collects from a tenant any rent of which the payment has been remitted, or is under suspension, the [2][Revenue Officer] may recover from landlord the amount or value of the rent so collected, and may also recover by way of penalty a further sum not exceeding such amount or value, and may cause to be refunded to the tenant the amount or value of the rent so collected from him.

(7) The provisions of this section relating to the remission and suspension of the payment of rent may be applied, so far as they can be made applicable, to land of which the land revenue has been released or redeemed, in any case in which, if the land revenue in respect of the land had not been released or redeemed, the whole or any part of it might, in the opinion of the [2][Revenue Officer], be remitted or suspended under the rules for the time being in force for regulating the remission and suspension of land revenue.

(8) Any sum of which the recovery is ordered under

1. Substituted *vide* Act XIII of 1996 for "Governor".
2. In section 36 (6) and (7), 60, 70 (1) and (2), 77 and 79 words "Assistant Collector of the first class" replaced by "Revenue Officer" *vide* Act III of 2008. (For earlier amendments see Act XIII of 1996).

sub-section (6) on account of rent or penalty may be recovered by the [1][Collector) as if it were an arrear of land. revenue.

Deposits.

37. In either of the following cases, namely :—

Power to deposit rent in certain cases with Revenue Officer.

(*a*) when a landlord refuses to receive or grant a receipt for any rent payable in money when tendered to him by a tenant ;

(*b*) when a tenant is in doubt as to the person entitled to receive rent payable in money ;

the tenant may apply to [2][a Revenue Officer] for leave to deposit the rent in his office, and the Revenue Officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice next hereinafter referred to.

38. (1) When a deposit has been so received it shall be deemed to be a payment made by the tenant to his landlord in respect of rent due.

Effect of depositing rent.

(2) The Revenue Officer receiving the deposit shall give notice of the receipt thereof to every person, who, he has reason to believe, claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled thereto or may, if he thiks fit, retain the deposit pending the decision of a competent Court as to the person so entitled.

(3) No suit or other proceeding shall be instituted against the State or any officer of the State, in respect of anything done by a Revenue Officer under this section, but nothing in this sub-section shall prevent any person entitled to receive amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue Officer.

1. Substituted *vide* Act XIII of 1996 for "Governor".
2. See foot-note under section 22 (1).

Recovery of rent from attached produce.

Recovery of rent from attached produce.

39. (1) If an order is made by any Court for the attachment of the produce of a tenancy or of any part of a tenancy, the landlord may apply to the Revenue Officer by whom the attachment is to be or has been made, to sell the produce and pay to him out of the proceeds of the sale thereof the amount or the value of—

(*a*) any rent which has fallen due to him in respect of tenancy within the year immediately preceding the application, and

(*b*) the rent which will be falling due after the harvesting of the produce and is chargeable against it.

(2) The Revenue Officer shall give the person at whose instance the attachment was made an opportunity of showing cause why the application of the landlord should not be granted, and, if he finds the landlord's claim to the whole or any part of the rent to be proved, he shall cause the produce, or such portion thereof as he may deem necessary to be sold, and shall apply the proceeds of the sale, in the first instance, to satisfy the claim.

(3) The finding of the Revenue Officer under sub-section (2) shall have the force of a decree in [1][an application] between the landlord and the tenant.

Recovery of arrears of rent as arrears of revenue.

[2][**39-A.** (1) In case of any general refusal on the part of the tenants of any local area to pay arrears of rent, rates or cesses in cash or kind due by them to their landlords, [3][the Government] may, by notification in the Gazette, declare that such arrears may be recovered as arrears of land revenue,

(2) In any local area to which a notification made under sub-section (1) applies, a landlord to whom an arrear of rent, rate or cess in cash or kind is due by a tenant may (notwithstanding anything to the contrary contained in this Act, or any other Regulation for the time being in force), [4][x x x

1. Substituted *vide* Act XII of 1955 for " the words "a suit".
2. Section 39-A added *vide* Act II of 1990.
3. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur".
4. Certain words omitted *vide* Act XII of 1955.

apply in writing to the [1][Duputy Commissioner], to realiz the same, and the [1][Deputy Commissioner] shall, after satisfying himself that the amount claimed is due, proceed to recover such amount with costs and interest as an arrear of land revenue.

(3) The [1][Deputy Commissioner] shall not be made [2][a party to any application] in respect of an amount for the recovery of which an order has been passed under this section.

(4) No appeal shall lie from an order of a [1][Deputy Commissioner] under this section, but nothing herein contained and no order passed under this section shall debar,

(*a*) a landlord [3][trom making an application under section 84] of this Act for the recovery of any amount due to him which has not been recovered under this section, or

(*b*) a person from whom any amount has been recovered under this section, in excess of the amount due from him, from recovering the said amount under section [4][84] of this Act.]

[5][**39-B.** (1) When a notification, under the provisions of section 39-A, sub-section (1) of the Tenancy Act, is made-applicable to local area and the [1][Deputy Commissioner] in charge, on the application of a landlord to whom an arrear of rent, rate or cess in cash or kind is due by a tenant, realizes the amount claimed, he shall also recover along with the sum collected the amount of the court-feee chargeable *ad valorem* under the provisions of the Court Fees Act, on the amount realized by him.

(2) Out of the sum collected by a [1][Deputy Commissioner] under the provision of section 39-A of the Tenancy Act, there shall be deducted an amount of 2 per cent. in case of cash collections, and $2\frac{1}{2}$ per cent. in case of collections in kind on account of the cost of collection. The amount deducted on account of cost of collection will be in addition to the amount of the court-fees recoverable by the Government under the provisions of sub-section (1).]

---

1. Substituted *vide* Act III of 2008 for "Wazir Wazarat".
2. Substituted *vide* Act XII of 1955 for "a defendant to any suit".
3. Substituted *vide* Act XII of 1955 for "from maintaining a suit under section 85".
4. Substituted *vide* Act XII of 1955 for the figure "85".
5. Section 39-B added *vide* Act III of 1991.

CHAPTER 1V.

RELINQUISHMENT, ABANDONMENT AND EJECTMENT.

Relinquishment.

Relinquishment by tenant for a fixed term.

40. A tenant holding for a fixed term under a contract or a decree or order of competent authority may relinquish his tenancy without notice at the end of the term.

Relinquishment by any other tenant,.

41. (1) Any other tenant may relinquish his tenancy by giving orally or in writing to his landlord or to his landlord's agent, on or before the date fixed by Appendix B of this Act, notice of his intention to relinquish the tenancy after the harvesting of the current crop.

(2) The tenant may, instead of, or in addition to, giving the notice in the manner mentioned in sub-section (1), apply to [1][a Revenue Officer] on or before the date aforesaid to cause the notice to be served on the landlord, and the Revenue Officer, on receiving the cost of service from the tenant, shall cause the notice to be served as soon as may be.

(3) If the tenant does not give notice in the manner prescribed in this section, he shall be liable to pay the rent of his tenancy for any part of the ensuing agricultural year during which the tenancy is not let by the landlord to some other person, or is not cultivated by the landlord himself.

Relinquishment of part only of a tenancy.

42. A tenant cannot without the consent of his landlord, relinquish a part only of his tenancy.

Abandonment.

Abandonment of a tenancy by occupancy-tenant.

43. If a tenant having a right of occupancy fails for more than one year without sufficient cause to cultivate his tenancy, either by himself or some other person, and to arrange for payment of the rent thereof as it falls due, the right of occupancy shall be extinguished from the end of that year.

1. See foot-note under section 22 (1).

EJECTMENT.

Liability to ejectment.

Grounds of ejectment of tenants.

[1][44. (1) No tenant shall be liable to be ejected from his tenancy except on any of the following grounds, namely :—

(*a*) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purpose for which it was let ;

(*b*) when rent is payable in kind, that he has without sufficient cause, failed to cultivate the land in the manner or to the extent customary in the locality in which the land is situate ;

(*c*) that a decree for arrears of rent in respect of the tenancy has been passed against him and remains unsatisfied without sufficient cause ;

(*d*) that being a tenant other than an occupancy tenant or a tenant for fixed term, he has sub-let the land except for reasons beyond his control ;

(*e*) that the landlord requires the land for his personal cultivation.

(2) Nothing contained in clause (e) of sub-section (1) shall render liable to ejectment an occupancy tenant or a tenant for a fixed term before the expry of the term for which the land was let to him.

(3) Notwithstanding anything contained in sub-section (1) a tenant holding for a fixed term under a contract or a decree or an order of competent authority shall be liable to ejectment at the expiration of the term or before expiration thereof on any ground which would justify ejectment under the cotract, decree or order.

EXPLANATION.—Personal cultivation shall include cultivation by any of the members of the family of the landlord].

Conditions for ejectment of tenant on ground of resumption for personal cultivation by landlord.

[2][45. (1) The ejectment of a tenant on the ground that the land is required for personal cultivation by the landlord shall be subject to the following conditions, namely :—

(*a*) a landlord whose holding does not exceed 4 acres of *abi* or 6 acres of *khushki* land in the Province of Kashmir including the districts of Ladakh and Gilgit and 6 acres of *abi*

1. Section 44 substituted *vide* Act XII of 1955.
2. Section 45 substituted *vide ibid*.

or 8 acres of *khushki* land in the Jammu Provience shall be entitled to resume for personal cultivation an unit of land not more than 2 acres of *abi* or 4 acres of *khushki* in the Kashmir Province including the districts of Ladakh and Gilgit and 4 acres of *abi* or 6 acres of *khushki* in the Jammu Province, including such land as is held by him in his personal cultivation ;

(*b*) a landlord whose holding exceeds the size of the holding specified in clause (*a*) shall also be entitled to resume for personal cultivation an unit of land not more than 2 acres of *abi* or 4 acres of *khushki* in the Kashmir Province including the district of Ladakh and Gilgit and 4 acres of *abi* or 6 acres of *khushki* in the Jammu Province, including such land as is held by him in this personal cultivation :

Provided that, no tenant shall, as a result of such resumption, be ejected in a manner as to reduce his tenancy to less than 2 acres of *abi* or 4 acres of *khushki* land in the Kashmir Province including districts of Ladakh and Gilgit and 4 acres of *abi* or 6 acres of *khushki* land in the Jammu Province ;

(*c*) the selection of land for personal cultivation by the landlord shall be made by mutual agreement between the landlord and the tenant or the tenants, as the case may be, and failing such agreement by a Revenue Officer with due regard to the better cultivation and management of such land, such as the proximity of land to the dwelling house, consolidation of holdings and facility of cultivation ;

(*d*) where a tenant is ejected in a manner that no land is left with him , or his tenancy is materially reduced, he may be settled on alternative land to the extent possible.

(2) Any landlord who after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, ejects any tenant otherwise than in due course of law shall forfeit his right to resume for personal cultivation the quantum of land from which the tenant is so ejected.]

Consequnces of failure to bring land under personal cultivation within prescribed period.

[1][**45. A.** (1) A landlord, who has secured the ejectment of his tenant on the ground that the land was required by him for his personal cultivation, shall be bound to bring such land under his personal cultivation within a period of six months in case of *dofasli* land and within one year in case of *ekfasli* land, from the date its possession is delivered to him, failing which he shall forfeit his right to hold such land for personal cultivation in future :

1. Section 45-A substituted *vide* Act XIIof 1955. (For insertion of section 45-A orginally see Act VII of 2005).

Provided that, no order against a landlord shall be made under this sub-section unless he has been given an opportunity of representing against such order.

(2) The landlord who has forfeited his right under sub-section (1) shall be dispossessed of such land, and a Revenue Officer shall restore it to the tenant ejected therefrom provided he holds less than the unit prescribed for a tenant in clause (*b*) of sub-section (1) of section 45 inclusive of the land so restored, and in case he holds more than the said unit, the Revenue Officer may let it to other landless tiller of the village in which the land is situate, and failing him to any other landless tiller as he observes fit, priority being given to such landless tiller, who brings the factum of such land not having been put under personal cultivation by the landlord within the prescribed period first to the notice of any Revenue Officer.

EXPLANATION.—(*i*) The landless tiller for the purposes of this Act includes a cultivator who holds or occupies land less than the unit of land prescribed for a tenant in clause (*b*) of sub-section (1) of section 45.

(*ii*) For purposes of this Act, "*dofasli*" land means land growing two or more crops within a year and "*ekfasli*" land means land growing only one crop within a year or two crops within two consecutive years.

(*iii*) For purposes of this Chapter, in the determination of the size of the holding of a landlord, 1 *kanal* of *abi* land will be treated to be equal to 1½ *kanals* of *khushki* land in the Kashmir Province including the districts ot Ladakh and Gilgit and 1½ *kanals* of *abi* land equivalent to 2 *kanals* of *khushki* land in the Jammu Province, and in the determination of the unit of land resumable by the landlord and also retainable by the tenant, 1 *kanal* of *abi* land will be treated to be equivalent to 2 *kanals* of *khushki* land in the Kashmir Province including the districts of Ladakh and Giligit and 1 *kanal* of *abi* land equivalent to 1½ *kanals* of *khushki* land in the Jammu Province].

[46.] Notwithstanding anthing contained in sub-section (1) of section 44, a tenant other than an occupancy, protected or fixed term tenant may be ejected at the time specified in Appendix B of this Act.]

Ejectment of tenant-at-will.

1. Section 46 substituted *vide* Act XII of 1955. (For earlier amendments see Act VII of 2005).

Procedure on ejectment

[1][47. (1) A tenant shall not be ejected otherwise than in execution of a decree for ejectment except—

Restristtons on ejectment.

(*a*) where a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied ; or

(*b*) where he is liable to be ejected under section 46 of this Act ; or

(*c*) where on an application by the landlord for resumption of land for personal cultivation an order has been passed under section 49 of the Act

(2) All suits for ejectment pending on the date of the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955; against occupancy, protected or fixed-term tenants on any of the grounds other than those specified in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (1) of section 44 shall abate and the plaintiffs in such suits shall, on application to the Collector, be entitle to a refund of court fee paid by them on the plaint filed in such suits.

EXPLANATION.—Suit shall include execution applications and appeals arising out of such suits.

48. (1) (*a*) In any such case as is mentioned in clause (*a*) of sub-section (1) of section 47, the landlord may apply to a Revenue Officer for ejectment of the tenant.

Ejectment for failure to satisfy decree for arrear of rent.

(*b*) On receiving such application the Revenue Officer shall, after such inquiry with respect to the existence of the arrear as he may deem necessary, cause a notice to be served on the tenant, stating the date of the decree and the amount due thereunder and informing him that if he does not pay that amount to the Revenue Officer within 30 days from receipt of the notice, he will be ejected from the land.

(*c*) If the amount is not so paid, the Revenue Officer shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant, unless good cause is shown to the contrary.

(2) (*a*) In any such case as is mentioned in clause (*b*) of sub-section (1) of section 47, the landlord may apply to a Revenue Officer for ejectment of the tenant.

(*b*) On receiving such application, the Revenue Officer, if he, after such enquiry as is considered sufficient, finds that the tenant is liable to ejectment shall, subject to the provi-

1. Sections 47 and 48 substituted *vide* Act XII of 1955- (For earlier amendm See Act XIII of 2007 and Act III of 2008).

sions of this Act with respect to the payment of compensation order the ejectment of the tenant.]

Ejectment in case of resumption for personal cultivation by landlord.

[1][**49.** (1) In any such case as is mentioned in clause (*c*) of sub-section (1) of section 47 a landlord may, within a period of six months from the date the Jammu and Kashmir Tenancy (Amendment) Act, 1955, comes into force, apply to a Revenue Officer in the form as given in Appendix C for ejectment of the tenant :

Provided that, such an application may be entertained beyond this period if the landlord proves that there was sufficient cause for not making it within such period :

Provided further that, where a landlord holds land in more than one district, he shall be entitled to exercise his right for resumption of land in respect of only such portion of it as is held by him in any one of such districts.

EXPLANATION.—The following shall *inter alia* be considered sufficient cause :—

(*a*) that the landlord was minor, of unsound mind or was under some other mental or physical disability rendering him incapable of undertaking cultivation ; or

(*b*) that he was employed in the service of the Government of Jammu and Kashmir, the Union of India or any other State of the Union and on the termination of such service his income is so inadequte that it has become necessary for him to take to personal cultivation ; or

(*c*) that he was out of the State for reasons beyond his control.

(2) All the tenants of the landlord shall be necessary parties to an application under sub-section (1).

(3) (*i*) On receiving the application the Revenue Officer shall fix a date of hearing and cause a notice to be issued to all the tenants mentioned in the application. On the date of hearing the tenants shall present written statements admitting or denying the particulars as mentioned in the application and shall also furnish further particulars if required by the Revenue Officer.

(*ii*) Notice to the tenants may be given by registered post.

(*iii*) The application shall bear a court fee of Rs. 2 and shall be verified in the manner prescribed by the Code of Civil Procedure, 1977, for verification of pleadings.

1. Section 49 substituted *vide* Act XII of 1955. (For earlier amendments see Act XIII of 2007 and Act III of 2008).

(*iv*) The Revenue Officer after such enquiry as he deems sufficient shall, subject to the provisions of section 45, order ejectment of the tenant or the tenants, as the case may be, from the land or such portion of it, as he considers fair, with due regard to the quantum of land that may be left with such tenant or tenants after such ejectment and such other factors as the productive capacity of land and the number of dependants and other sources of income of the tenant

(*v*) (*a*) It shall be lawful for the Revenue Officer to order exchanges of land between the tenants *inter se* or between the landlord and the tenant or tenants, as the case may be, with a view to consolidate their holdings or otherwise as he considers fair, provided that the exchange of land between a landlord and tenant shall be effected, only if the landlord is also the owner of the land.

(*b*) Notwithstanding anything contained in section 138 of the Transfer of Property Act, 1977, exchanges ordered under clause (*a*) shall be deemed to be valid transfers.

(*vi*) The Revenue Officer shall also decide disputes arising between the tenants *inter se* in regard to the land from which ejectment is to be ordered.

(4) Notwithstanding anything contained in section 15-A, the right of protected tenancy shall be deemed to have accrued in respect of the land transferred to a tenant in exchange under the provisions of clause ( ) of sub-section (3).]

[1][50.—Omitted.]

51. The [2][Government] may make rules prescribing—

Power to make rules.

(*a*) the form and language of applications and notice under the two last foregoing sections ; and

(*b*) the manner in which those applications and notices are to be signed and attested.

52. When a tenancy is held jointly by several landlords—

Tenant cannot be ejected from part only of a tenancy, or except at the instance of all the landlords.

(*a*) the tenant shall not be ejected from a part only of the tenancy, being the undivided share of one or more of

1. Section 50 omitted *vide* Act XIII of 2007.
2. Substituted for the words "Revenue Member subject to the sanction of His Highness the Maharaja Bahadur in Council" *vide* Act XIII of 1996.

such landlords ; and

(*b*) he shall not be ejected from such tenancy except at the instance of all the landlords, unless the Revenue Officer, or Revenue Court, is satisfied that the landlords applying or suing for ejectment are acting *bona fide* in the interest of the other landlords as well as in their own interest, and that the tenant will not be prejudiced by reason of the proceedings being taken in the absence of such other landlords of the tenancy.

Time for ejectment.

53. A decree or order for the ejectment of a tenant shall be executed only between the dates fixed in this behalf in Appendix B of this Act, unless the Court making the decree or (where the order is made [1][under section 48 or section 49]) the officer making the order, for reasons to be recorded in the order, otherwise directs.

Award of compensation to landlord instead of ejectment.

54. (1) If in a suit for the ejectment of a tenant [2][on either of the grounds mentioned in [3][clauses (*a*) and (*b*) of sub-section (1) of section 44]] it appears to the Court that an award of compensation to the landlord will be sufficient compensation for the loss sustained by him, the Court may, instead of making a decree for the ejectment of the tenant, order him to pay into Court, within a period to be fixed in the order, such compensation as the Court thinks fit.

(2) The Court may, for special reasons to be recorded in its order, from time to time extend the period fixed under sub-section (1).

(3) If within the period fixed under sub-section (1) or (2) the amount is not paid into Court, a decree for the ejectment of the tenant shall be made.

Rights of ejected tenants in respect of crops and land prepared for sowing.

55. (1) Where, at the time of the proposed ejectment of a tenant from any land, his uncut or ungathered crops are standing on any part thereof, he shall not be ejected from that part until the crops have ripened and he has been allowed a reasonable time to harvest them.

(2) The Court or Revenue Officer decreeing or ordering the ejectment of the tenant shall determine any dispute arising

1. Substituted *vide* Act XII of 1955 for "under section 49".
2. Substituted *vide* Act VII of 2005 for certain words etc.
3. Substituted *vide* Act XII of 1955 for "clauses (a) and (b) of section 44 or of section 45 or of section 45-A."

in consequence of the provisions of sub-section (1) between the landlord and the tenant or between the landlord and any person entitled to harvest the crops of the tenant, and may in its or his discretion—

(*a*) direct that the tenant pay for the longer occupation of the land secured to him under sub-section (1) such rent as may be fair and equitable, or

(*b*) determine the value of the tenant's uncut and ungathered crops, and, on payment thereof by the landlord to the Court or Revenue Officer, forthwith eject the tenant.

(3) When a tenant, for whose ejectment proceedings have been taken, has, conformably with local usage, prepared for sowing any land comprised in his tenancy, but has not sown or planted crops on that land, he shall be entitled to receive from the landlord before ejectment a fair equivalent in money for the labour and capital expended by him in so preparing the land, and the Court or Revenue Officer before which or whom the proceedings are pending shall, on the application or the tenant, determine the sum payable to the tenant under this sub-section and stay his ejectment until that sum has been paid to him.

Relief for wrongful dispossession.

[1][**56.** (1) (*i*) A tenant who after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, is ejected otherwise than in due course of law may, within six months of the date of such ejectment, make an application to a Revenue Officer for reinstatement on the land from which he has been so ejected.

Relief for wrongful ejectment after the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955.

(*ii*) On receiving the application the Revenue Officer shall make such enquiry as he deems sufficient and if he finds, that the tenant has been illegally ejected, shall restore him to possession and may impose on the landlord a fine not exceeding Rs. 200 and may also award to the tenant such portion of it as compensation for his wrongful disturbance as he considers fair.

(2) In any enquiry under clause (*ii*) of sub-section (1) the defence of the landlord that the land is required by him for personal cultivation, and where a surrender is not made in writing and is not certified by a Revenne Officer, the defence of the landlord that the possession of the land was voluntarily surrendered by the tenant, shall not be entertained.]

1. Section 56 substituted *vide* Act XII of 1955. (For earlier amendments see Acts I and XIII of 2007).

[1][57. Omitted.]

Relief for wrongful ejectment before the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955.

[2][57-A. (1) (*a*) A tenant who has been ejected otherwise than in due course of law from any land comprised in his tenancy may, within six months of the date of commencement of the Jammu and Kashmir Tenancy (Amendment) Act, 1955, apply to a Revenue Officer for reinstatement on the land from which he has been so ejected :

Provided that, a tenant so ejected on a date earlier than the first day of Baisakh, 2004, shall not be entitled to seek relief under the provisions of this section.

(*b*) On receiving the applications the Revenue Officer shall make such enquiry as he deems sufficient and if he finds that the tenant has been illegally ejected shall, subject to the provisions of sub-section (2), order his reinstatement except where such land has already been mutated in the name of a person other than such tenant under the provisions of of the Big Landed Estates Abolition Act, 2007.

(2) Where the tenant making the application already holds —

(*i*) more than the unit prescribed for a tenant in clause (*b*) of sub-section (1) of section 45 and the land in respect of which application is made under sub-section (1) is occupied by another tenant who holds—

(*a*) less than the said unit, no order for reinstatement of such tenant shall be made ;

(*b*) more than the said unit, an order for reinstatement of such tenant shall be made in respect of so much of the land as is held by the other tenant in excess of the said unit ;

(*ii*) less than the unit, prescribed for a tenant in clause (*b*) of sub-section (1) of section 45 and the land in respect of which the application is made under sub-section (1) is occupied by another tenant, who also holds less than the said unit, the Revenue Officer shall either refuse reinstatement or pass an order for reinstatement of such tenant in respect of such portion of the land as he deems fair.

(3) A tenant, who is not restored possession of either the whole or part of the land from which he has been ejected otherwise than in due course of law, shall be entitled to compensation for wrongful disturbance which shall not exceed Rs. 200 and which shall be payable by the landlord:

Provided that, the tenant shall not be entitled to claim compensation in a case where the Revenue Officer has refused

1. Section 57 omitted *vide* Act XII of 1955.
2. Section 57-A substituted *vide* Act XII of 1955. (For earlier amendments see Act 7 of 2007).

to order his reinstatement on the ground that such land has already been mutated in the name of a person other than such tenant under the provisions of the Big Landed Estates Abolition Act, 2007, or where his reinstatement has been refused in pursuance of the provisions of sub-section (2) of this section.

(4) Any fine including compensation imposed under this Chapter shall be recoverable as arrears of land revenue.]

Penalty for unlawful ejectment after restoration of possession under section 56 or section 57-A.

[1][57-B. (1) No landlord shall eject otherwise than in due course of law a tenant who has been reinstated on land under section 56 or section 57-A.

(2) Whoever ejects otherwise than in due course of law such a tenant from land or a part thereof, on which he (the tenant) was so reinstated shall, on conviction by a Magistrate of the first class especially empowered by the Government in this behalf, be punished with imprisonment for a term which may extend to one year or with fine which may exted to five hundred rupees or with both.

(3) On conviction by the magistrate the Collector shall *suo moto* or on an application made to him by the tenant proceed to reinstate the tenant on the land from which he has been so ejected.

(4) The Magistrate may, when passing sentence of fine under sub-section (1), order the whole or any part of fine recovered to be paid as compensation to the tenant so ejected.]

Power to alter dates.

58. (1) Any of the dates fixed in Appendix B of this Act may be altered by order of the [2][Government].

(2) Such order shall be published by notification and shall not take effect until the expiration of one year from the date of such publication.

Restriction on execution of decree or order.

[3][58-A. No order or decree of any Court whereby a tenant has been ordered to be ejected from any land, if not executed till the date of the commencement of the Jammu and Kashmir Tenancy (Amendment) Act, [4][1955,] shall be executed where a right of protected tenancy has accrued to him for such land under the provisions of this Act.]

---

1. Section 57-B inserted *vide* Act XII of 1955.
2. Subtituted *vide* Act XIII of 1996 for "Revenue Minister with the previous sanction of His Highnes the Maharaja Shaib Bahadur."
3. Section 58-A inserted *vide* Act I of 2007
4. Substituted *vide* Act xII of 1955 for 2005".

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

Alienation.

[1][59. Omitted.]

Transfer of right of occupancy.

[60. Right of occupancy may be transferred by sale, mortgage or gift, subject to the provisions of Alienation of Land Act and to the following provisions, namely :—

(1) If an occupancy tenant intends to transfer his right of occupancy, in whole or part, by sale, mortgage or gift, he shall apply to [2][a Revenue Officer] for permission to proceed with such transfer :

Provided that, in the case of occupancy tenants holding directly under the State, such permission shall not be necessary.

(2) On receipt of such application, the [3][Revenue Officer] shall summon the landlord of the tenancy, and shall enquire whether he desires to purchase the right of occupancy which the tenant intends to transfer.

(3) If the landlord, without good and sufficient reason, fails to attend in obedience to the summons, due service of such summons having been proved to the satisfaction of the [3][Revenue Officer] or if the landlord on attendance declines to purchase the right of occupancy which the tenant intends to transfer, the [3][Revenue Officer] shall, by written order, authorise the tenant to proceed with the transfer.

(4) If the landlord, on appearance before the Revenue Officer states that he wishes to purchase the right of occupancy the Revenue Officer shall fix the value of the said right.

(5) The landlord shall be deemed to have purchased the said right, if he pays to the tenant through the Revenue Officer the value fixed under sub-section (4) within such time

1. Section 59 omitted and section 60 (as amended by Revenue Department Notification S-38) substituted *vide* Act I of 1995.
2. Substituted *vide* Act III of 2008 for "an Assistant Collector of the first class" (For earlier amendment see Act XIII of 1996.).
3. Substituted *vide* Act III of 2008 for "Assistant Collector" (For earlier amendment see Act XIII of 1996).

as the Revenue Officer by his order under sub-section (4) appoints in that behalf.

(6) On the value being so paid the right of occupancy shall be extinguished, and the Revenue Officer shall, on application being made to him, put the landlord in possession of the tenancy, or part thereof transferred.

(7) If the landlord fails to pay the value fixed within the time appointed, the Revenue Officer shall authorise the tenant to proceed with the transfer.

(8) Where there are several landlords of the tenancy, any one or more of them may claim to purchase a right of occupancy under sub-section (4) of this section; and in case of a dispute arising between two or more landlords of a tenancy in proceedings under this section, the Revenue Officer shall pass such orders as appear to him to be equitable in regard to the matters in dispute having regard especially to their respective shares in the ownership of the tenancy.

(9) Where two or more landlords of a tenancy desire to exercise a right of purchase under sub-section (4), such landlords shall be jointly and severally responsible for the payment within the time appointed of the whole amount fixed under that sub-section.

(10) In case an occupancy-tenant of grade B intends to transfer his right of occupancy, the option of purchasing such right under this section shall be exercised in the first place by occupancy-tenants of grade A to whom the tenant of grade B is subordinate; and in the second place by the superior landlord of the tenancy.]

Disallowance of transfer.

61. (1) In proceedings under section 60 it shall be open to the landlord, and in the cases mentioned in sub-section (10) of section 60 it shall be open to the occupancy-tenants of grade A, to show cause for the disallowance of the proposed transfer.

(2) If the [1][Revenue Officer], after making such enquiry as he thinks necessary, considers that reasonable ground has been shown for disallowing the proposed transfer, he shall pass orders on the application disallowing it.

EXPLANATION.—Among others the fact that a right of occupancy is likely to be extinguished on the death of the existing tenant under sub-section (5) of section 67 of this

1. Substituted *vide* Act III of 2008 for "Assistant Collector". (For earlier amendment see Act XIII of 1996).

Act may be a sufficient cause for the disallowance of the transfer under this section.

Extinction of right of mortgagee on extinction of tenancy.

62. If an occupancy-tenant whose rights are subject to a mortgage dies without heirs entitled to succeed under section 67 of this Act, the right of the mortgagee shall be extinguished.

Sale of right of occupancy in execution of decree.

63. (1) A right of occupancy [1][x x] may be sold in execution of a decree or order of a Court [2][subject to the provisions of Alienation of Land Act].

(2) [3][x x] Notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place the landlord pays to the Court, or to the officer conducting the sale, a deposit of 25 per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid :

[4][Provided that, the landlord pays the balance of the purchase-money within fifteen days of the date on which the sale takes place].

Rights and liabilities of transferee of right of occupancy.

64. (1) When a right of occupancy has been transferred in accordance with the provisions of this Act by sale, gift or usufructuary mortgage to a person other than the landlord, that person shall, in respect of the land in which the right subsists, have the same rights and be subject to the same liabilities, as the tenant, to whom before the right belonged, had and was subject to.

(2) When a right of occupancy has been transferred by sale or gift to a person other than the landlord, the right of the transferee shall devolve on his heirs according to the provisions of section 67 of this Act.

Sub-letting.

65. (1) A tenant having a right of occupancy in land may, subject to the provisions of this Act and to the conditions of any written contract between him and his landlord, sublet the land or

1. The words "in the Jammu Province" deleted *vide* Act I of 1995.
2. Added *vide* Act I of 1995.
3. The word "but" deleted *vide* Act XIII of 1996.
4. Proviso to section 63(2) added *vide* Act XIII of 1996.

any part thereof for any term not exceeding six years.

(2) A person, to whom land is sublet by a tenant having a right of occupancy therein, shall in respect of that land, and so far as regards the landlord, be, jointly with the tenant, subject to all the liabilities of the tenant under this Act.

[1][**65-A.** Every transfer, whether by any act of the parties or by an order or decree of any Court, made within one month preceding the commencement of the Jammu and Kashmir Tenancy (Amendment) Act (VII of 2005) or thereafter, which purports or would operate to restrict a tenant from enforcing or exercising any right conferred on or secured to him by the Act, mentioned above, is void to that extent.]

Restrictions on transfer by landlords.

Irregular Transfers.

66. Transfers of occupancy right not made in accordance with the provisions of this Act shall be voidable on suit instituted within six years of the date of the transfer at the instance of the landlord or in the cases mentioned in sub-section (10) of section 60, at the instance of either of the landlord or of the occupancy-tenant of grade A.

Irregular transfers voidable.

Succession.

67. (1) When a tenant having a right of occupancy in any land dies, the right shall devolve—

Succession to right of occupancy.

(*a*) on his male lineal descendants, if any, in the male line of descent ;

EXPLANATION.— "Male lineal descendant" includes a son formally adopted according to Hindu Law, and in accordance with any Acts in force in the State regarding such adoptions ;

(*b*) failing such male lineal descendants on—

(*i*) his widow, or

(*ii*) father's widow, or

(*iii*) the widow of a male lineal descendant in the male line of descent, who predeceased the late tenant :

1. Section 65-A inserted *vide* Act I of 2007.

Provided that, such widow has not remarried, and further that the right of a female succeeding to a right of occupancy under this clause shall be extinguished when she dies or remarries, or abandons the land, or is under the provisions of this Act ejected therefrom, and

(c) failing such descendants and widows, or, if a female succeeds to the tenancy under clause (*b*), then when her interest terminates; on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives :

Provided, with respect to clause (*c*) of this sub-section, in the case of a right of occupancy not held directly from the State, that the common ancestor occupied the land.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) If there be more than one widow entitled to succeed under any one sub-division of clause (*b*) of sub-section (1), the right of occupancy as among such widows shall be shared by all of them equally, with benefit of [1][survivorship] unless an established custom to the contrary be proved to exist.

(4) When a widow succeeds to a right of occupancy [2][and such right is not held directly from the State as landlord in the Jammu Province] she shall not transfer the right by sale, gift or mortgage, or by sub-lease for a term exceeding [3][two years].

(5) If the deceased tenant has left no such heirs as are mentioned in sub-section (1) or in section 68 of this Act, on whom his right of occupany may devolve, the right shall be extinguished.

EXCEPTION.—The provisions of this section shall not be applicable to a right of occupancy held by any person professing the Budhist religion, or held by a member of any tribe, or in any locality, specially exempted therefrom by [4][the Government] and amongst such persons, or in such tribe or locality the right shall devolve in accordance with the customs in force regarding the devolution of rights in land in the community or tribe to which the tenant belongs or in locality in which the tenancy is situate.

1. Substituted for "remaindership", *vide* Act XIII of 1996.
2. Inserted in section 67 (4) *vide* Revenue Department Notification No. S-43 dated 12th November, 1929 published in the Government Gazette dated 21st Maghar, 1986.
3. Substituted for "one year" *vide* Act XIII of 1996.
4. Substituted *vide* Act XIII of 1996 for "order of His Highness the Maharaja Bahadur in Council."

68. (1) An appointed heir shall not succeed as such to a right of occupancy without the consent of the landlord.

Succession of appointed heir or *chela*.

EXPLANATION.—"Appointed heir" includes a son informally adopted in accordance with customary law, and it also includes a *khandamad*, but it does not include an illegitimate son.

(2) The landlord shall be deemed to have given his consent under sub-section (1) of this section, if the appointed heir continues to hold possession of the tenancy for a period of three years from the date of the death of the deceased tenant with the knowledge of the landlord, and without interference by him.

(3) The *chela* of a celibate *sadhu* or *faqir* shall not succeed to a right of occupancy held by such *sadhu* or *faqir* without the written consent of the landlord.

(4) On the death without heirs entitled to succeed under section 67 of this Act of a *sadhu* or *faqir* who was the manager of a temple, *khanqah* or other religious institution, a right of occupacy held by such *sadhu* or *faqir* shall devolve on such temple, *khanqah* or institution, unless the landlord, in a suit preferred before a competent Court, proves that the right of occupancy was held by the deceased *sadhu* or *faqir* personally, and not by him as manager on behalf of such institution.

[1][68-A. (1) The provisions of sections 67 and 68 of this Act shall apply *mutatis mutandis* to protected tenants.

Application of sections 67 and 68 to and nullity of transfers made by protected tenants.

(2) (*a*) Any transfer of a right of protected tenancy in respect of land shall be null and void and shall cause forfeiture of such rights in such land.

(*b*) When a right of protected tenancy is forfeited under clause (*a*) the landlord may make an application to a Revenue Officer to eject the transferee or the tenant, whoever be in possession of such land.

(*c*) An application under clause (*b*) shall be deemed to be an application under section 46 and dealt with accordingly.

---

1. Section 68-A substituted *vide* Act XII of 1955. (It was inserted *vide* Act VII of 2005).

CHAPTER VI.

DEFINITION OF AREA HELD IN RIGHT OF OCCUPANCY OR PROTECTED TENANCY.

69. (1) Where a [1][right of occupancy or protected tenancy extends] to a part only of a tenancy, either to an undivided share of such tenancy, or to a specified but undefined area included in such tenancy, [2][a Revenue Officer] may of his own motion or on the application of either the landlord or the tenant of the tenancy take action to separate such share or define such area.

Definition of right of occupancy or protected tenancy in part of tenancy.

(2) Such application shall be deemed to be an application for the partition of land, and the [3][Revenue Officer] in taking action under sub-section (1) shall be guided, as far as may be, by [4][any law or rule having the force of law prevailing] at the time regarding such partitions.

[5][**69-A.** Notwithstanding anything contained in section 31 of the Land Revenue Act, 1996, any entry made in a record of rights or in annual record under the provisions of that Act or rules thereunder, whereby the *khudkashi* cultivated holding except land grown with trees, of a land-holder or any one of the co-sharing land-holders is shown to exceed one hundred *kanals* shall not be presumed to be true.]

Presumption against *Khudkasht* entries in revenue records.

CHAPTER VII.

IMPROVEMENTS AND COMPENSATION.

Improvements by landlords.

70. (1) Without the previous permission of [2][a Revenue Officer] a landlord shall not make an improvement on tenancy of a tenant having a right of occupancy [6][or protected tenancy.]

Improvements by landlords on tenancies of occupancy or protected tenants.

1. Substituted *vide* Act I of 2007 for "right of occupancy extends".
2. Substituted *vide* Act III of 2008 for "an Assistant Collector of the First class".
3. Substituted *vide* Act III of 2008 for "Assistant Collector".
4. Substituted *vide* Act XIII of 1996 for "the law or rules in force".
5. Section 69-A inserted *vide* Act VII of 2005.
6. Added *vide* Act I of 2007.

(2) If a landlord, desires to make such an improvement, he may apply to the [1][Revenue Officer] for permission to make it, and the [1][Revenue Officer] shall, before making an order on the application, hear the objection, if any, of the tenant.

(3) In making an order on an application under sub-section (2), the Revenue Officer shall be guided by such rules, if any, as the [2][Government may] make in this behalf.

Improvements by tenants.

Title of occupancy of protected tenant to make improvements.

71. A tenant having a right of occupancy [3][or a protected tenant] is entitled to make improvements on his tenancy

Title of tenants not having right of occupancy to make improvements.

72. (1) [4][A tenant not having a right of occupancy] [5][or protected tenancy] may make improvements on his tenancy with the assent of his landlord.

(2) If at any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having right of occupancy, the assent may be inferred from circumstances.

Improvements made before commencement of this Act.

73. Improvements made by a tenant before the commencement of this Act shall be deemed to have been in accordance with this Act, unless they were contrary to [6][any law or rules having the force of law] in force at the time, or unless, in the case of a tenant not having a right of occupancy, it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

Improvements begun in anticipation of ejectment.

74. A tenant ejected in execution of a decree, or in pursuance of a notice of ejectment, shall not be entitled to compensation for any improvement begun by him after the institution of the suit, or service of the notice which resulted in his ejectment.

1. See footnote under section 36 (6).
2. Substituted *vide* Act XIII of 1996 for the words "Revenue Member may with the sanction of His Highness the Maharaja Bahadur in Council".
3. Added *vide* Act VII of 2005.
4. Substituted *vide* Act I of 2007 for "a tenant having a right of occupancy".
5. Added *vide* Act XII of 1955.
6. Substituted *vide* Act XIII of 1996 for "the Tenancy Rules".

Tender of lease for twenty years to tenant to be a bar to right to compensation.

75. If a landlord tenders to a tenant a lease of his tenancy for a term of not less than twenty years from the date of the tender at the rent then paid by the tenant, or at such other rent as may be agreed on, the tender, if accepted by the tenant, shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

Liability to pay compensation for improvements to tenant, on ejectment or on enhancement of his rent.

76. Subject to the foregoing provisions of this Chapter, a tenant who has made an improvement on his tenancy in accordance with this Act shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvements :

[1][Provided that a *chowkidar* of a Forest Rest House cultivating land in lieu of or in addition to the monthly salary for his service to the Department shall not be entitled to any compensation on relinquishing the land].

Compensation for disturbance of clearing tenant.

77. (1) A tenant who has cleared and brought under cultivation waste land in which he has not a right of occupancy shall, if ejected from that land, be entitled to receive from landlord as compensation for disturbance, in addition to any compensation for improvements, a sum to be determined by a Revenue Court or [2][a Revenue Officer] in accordance with the merits of the case, but not exceeding five years' rent of the land :

Provided that a tenant who is a joint owner of land to which this section applies shall not be entitled to compensation for disturbance on ejectment from the land or any part thereof.

(2) If rent has been paid for the land by division or appraisement of the produce, or by rates fixed with reference to the nature of the crops grown, or if no rent ; or no rent other than the land revenue of the land and the rates and cesses chargeable thereon has been paid therefor, the compensation may be computed as if double the amount of the land revenue of the land were the annual rent thereof.

1. Proviso to section 76 added *vide* Act VII of 1991.
2. See footnote under section 36 (6).

Procedure in Determining Compensation.

Determination of compensation by Revenue Court.

78. (1) In every suit [1][or application] by a landlord to eject a tenant or to enhance his rent, the Court [1][or the Revenue Officer] shall direct the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof.

(2) If the Court decrees [1][or the Revenue Officer orders] ejectment of the tenant or the enhancement of his rent, it [1][or he] shall determine the amount of compensation, if any, due to the tenant, and shall stay execution of the decree until the landlord pays into Court [1][or to the Revenue Officer] that amount less any arrears of rent or costs proved to the satisfaction of the Court [1][or the Revenue Officer] to be due to him from the tenant.

Determination of compensation by Revenue Officers.

79. [2][Where a notice has been served on a tenant [3][under section 48]] the tenant may apply to [4][a Revenue Officer] having authority to order his ejectment [3][under section 48] [5][x x x x x x x] to determine the amount of compensation due to him for improvements or for disturbance, or for both; and the [4][Revenue Officer] shall determine the amount, if any, accordingly, and stay the ejectment of the tenant until the landlord pays to the [4][Revenue Officer] the amount so determined, less any arrears of rent or costs proved to the satisfaction of the [4][Revenue Officer] to be due to the landlord from the tenant.

Matters to be regarded in assessment of compensation for improvement.

80. In estimating the compensation to be awarded under this Chapter to a tenant for an improvement, the Court or Revenue Officer shall have regard to—

(*a*) the amount by which the value or the produce of the tenancy, or the value of that produce, is increased by the improvement;

(*b*) the condition of the improvement and the probable duration of its effect;

(*c*) the labour and capital required for the making of

1. Words added *vide* Act XII of 1955.
2. Substituted *vide* Act XIII of 2007 for certain words.
3. Substituted *vide* Act XII of 1955 for "under section 49".
4. See footnote under section 36 (6).
5. The words "or section 50 as the case may be" omitted *vide* Act XIII of 2007.

such an improvement ;

(*d*) any reduction or remission of rent or other advantage allowed to the tenant by th landlord in consideration of the improvement ; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, the length of time during which the tenant has had benefit of the improvement.

Form of compensation.

81. (1) The compensation shall be made by payment in money, unless the parties agree that it be made in whole or in part by the grant of a beneficial lease of land or in some other way.

(2) If the parties so agree, the Court or Revenue Officer shall make an order accordingly.

Relief in case of ejectment before determination of compensation.

Relief in case of ejectment before determination of compensation.

82. (1) If from any cause the amount of compensation payable to a tenant under this Chapter for improvement or disturbance, or, under section 55 for the value of uncut or ungathered crops, or the preparation of land for sowing, has not been determined before the tenant is ejected, the ejectment shall not be invalidated by reason of the omission ; but the Court or Revenue Officer which decreed or who ordered the ejectment may, on application made by the tenant within one year from the date of the ejectment, correct the omission by making in favour of the tenant an order for the payment to him by the landlord of such compensation as the Court or officer may determine the tenant to been titled to.

[1][No such order shall be operative until the tenant in whose favour the order is made has paid such *ad valorem* court fee as would be payable on a plaint for a claim of the amount ordered to be paid to the tenant].

(2) An order made under sub-section (1) may be executed in the same manner as a decree for money may be executed by a Revenue Court.

---

1. Second para to section 82 (1) added *vide* Act XIX of 1989.

CHAPTER VIII.

JURISDICTION AND PROCEDURE.

Jurisdiction

Revenue Officers.

33. There shall be the same classes of Revenue Officers under this Act as under the Jammu and Kashmir Land Revenue Act, 1996, and in the absence of any order of the Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under that Act shall be a Revenue Officer of the same class having jurisdiction within the same local limits under this Act.

Applications and proceedings cognizable by Revenue Officers

[1][**34.** (1) The following applications and proceedings shall be disposed of by Revenue Officers as such, and no Court shall take cognizance of the matters with respect to which any applications or proceedings might be instituted :—

First Group.

(*a*) applications by a landlord or a tenant for declaration of a right of occupancy under section 7-A(1) and (3);

[2][(*a*-1) applications by a tenant under section 15-B for declaration and entry of a right of protected tenancy, or by a landlord to prove that a tenant has not such a right ;]

(*b*) proceedings under section 32 or 33 for adjustment of cash rents ;

(*c*) proceedings relating to the remission and suspension of rent under section 36 ;

[3][(*d*) applications under section 48, 49 or 68-A ;]

(*e*) applications by a tenant under section 79 ;

1. Section 84 substituted *vide* Act III of 2008. (For earlier amendments see Acts XIII of 1996, VII of 2005, I of 2007 and XIII of 2007).
2. Clause (*a*-1) substituted *vide* Act XII of 1955. (It was inserted *vide* Act XX of 2009).
3. Clause (*d*) substituted *vide* Act XII of 1955.

[1][(*f*) applications or proceedings under sections 56, 57 A, 57-B ;]

(*g*) applications under section 60 (1) for permission to transfer a right of occupancy and all proceedings under that section ;

Second Group

(*h*) proceedings under Chapter VII with respect to the award of compensation for improvement or disturbance ;

(*i*) applications under section 62 for extinction of right of mortgagee on extinction of tenancy ;

(*j*) applications or proceedings under section 69 for definition of a right of occupancy ;

(*k*) applications by a landlord under section 70 for permission to make an improvement on a tenancy ;

(*l*) applications under section 22 with respect to the division or appraisement of produce ;

(*m*) applications under section 55 for the determination—

(*i*) of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejectment of a tenant, or

(*ii*) of the value of such crops or of the sum payable to the tenant for labour and capital expended by him in preparing land for sowing ;

[2][(*mm*) applications or proceedings under section 19-A, 19-B or 45-A;]

Third Group.

(*n*) applications under section 37 by tenants to deposit rent ;

(*o*) applications under section 41 for service of notice of relinquishment.

(2) A Collector may dispose of any of the applications and proceedings mentioned in sub-section (1).

[3][(2-a) An Assistant Collector of the Ist Class not below the rank of Assistant Commissioner or an Assistant Settlement officer may dispose of such of the applications and proceedings under clauses (*a*), (*a*-1,) (*d*) and (*g*) mentioned in the First Group of sub-section (1) as may be transferred to him by the Collector.]

(3) An Assistant Collector of the first class may dispose of any of the applications and proceedings mentioned in the second and third groups of that sub-section [4][x x x]

1. Clause (*f*) substituted *vide* Act XII of 1955.
2. Clause (*mm*) inserted *vide* Act XII of 1955.
3. Sub-section (2-a) added *vide* Act XIII of 1956.
4. Proviso to sub-section (3) omitted *vide* Act XIII of 1956 (It was inserted by Act XII of 1955.)

(4) An Assistant Collector of the second class may dispose of any of the applications mentioned in the third group of that sub-section.]

Revenue Courts, and suits cognizable by them.

85. [1][(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) of this section or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

(2) There shall be the same classes of Revenue Courts as of Revenue Officers under this Act, and in the absence of any order of the Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits, under this Act, shall be Revenue Court of the same class having jurisdiction within the same local limits.

(3) The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—

First Group.

(*a*) suits by a tenant under section 7-A (1) or otherwise, to establish a right of occupancy, or by landlord to prove that a tenant has not such a right ;

[2][(*a*-1) Omitted].

(*b*) suits between landlard and tenant for enhancement or reduction of rent under section 27, 28 or 29 ;

(*c*) suits by landlord or tenant to set aside a lease or agreement under section 34 (and suits relating to the rent to be paid under a mortgage made in accordance with form (*c*) as prescribed by section 8 of the Jammu and Kashmir Alienation of Land Act);

(*d*) suits by landlord to eject the tenant ;

[3][(*e*) Omitted].

(*f*) suits by a landlord under section 66 to set aside a transfer made of a right of occupancy, or to dispossess a person to whom such a fransfer has been made, or for both purposes ;

(*g*) any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held ;

1. Section 85 substituted *vide* Act III of 2008. (For earlier amendments see Acts V of 1995, XIII of 1996, VII of 2005, I of 2007 and XIII of 2007).

2. Clause (*a*-1) deleted *vide* Act XII of 1955. (It was inserted *vide* Act XX of 2009).

3 Clause (*e*) deleted *vide* Act XII of 1955.

(*h*) suits for sums payable on account of village cesses or village expenses ;

(*i*) suits by a co-sharer in an estate, holding or tenancy for a share of the profits thereof or for a settlement of accounts ;

(*j*) suits for the recovery of over-payments of rent, of land revenue, or of any other demand for which a suit lies in a Revenue Court under this sub-section ;

(*k*) suits relating to the emoluments of [1][x x] village-officers ;

Second Group.

(*l*) suits [2][x x x] for sums recoverable under section 18 ;

(*m*) suits by a land-owner to recover moneys claimed as due for the enjoyment of rights in or over land or in waters including rights of irrigation, rights over fisheries, rights of pasturage and forest rights ;

(*n*) suits for sums payable on account of land revenue or of any other demand recoverable as an arrear of land revenue under any enactment for the time being in force, and by a superior land-owner for other sums due to him as such.

(4) A Collector may hear and determine any of the suits mentioned in sub-section (3).

[3][(4-*a*) An Assistant Collector of the first class not below the rank of Assistant Commissioner or an Assistant Settlement officer may dispose of such of the suits under clauses (*a*) and (*d*) mentioned in First Group of sub-section (3) as may be transferred to him by the Collector.]

(5) An Assistant Collector of the first class may hear and determine any of the suits mentioned in the second group of that sub-section, provided that the value of the subject matter does not exceed Rs. 500 ; and

(6) An Assistant Collector of the second class may hear and determine any of the suits mentioned in the second group of that sub-section, provided that the value of the subject matter does not exceed Rs. 100.]

Conferment of powers of Revenue Officer.

[4][**85-A.** (1) Notwithstanding anything contained in the Land Revenue Act, 1996, the Government may by notification in the Government Gazette confer on any person—

(*a*) all or any of the powers of a Collector under this Act, or

(*b*) all or any of the powers with which an Assistant Collector of either class is, or may be, invested thereunder,

1. Wards "Zaildars, *Inamdars* or" deleted *vide* Act XII of 1955.
2. Certain words deleted *vide ibid.*
3. Sub-section (4-a) inserted *vide* Act XIII of 1956.
4. S.85-A added *vide* Act XX of 2009.

and may by notification in the Government Gazette withdraw any powers so conferred.

(2) A person on whom powers are conferred under subsection (1) shall exercise those powers within such local limits and in such classes of cases as the Revenue Minister may direct and, except as otherwise directed by the, Revenue Minister, shall for all purposes connected with ther exercise thereof be deemed a Collector or Assistant Collector, as the case may be.

(3) The Government may direct [1][three or more persons including the Chairman] in any place to sit together as a Board, and may by an order invest such Board with any of the powers conferred or conferrable by or under this Act on a Collector or an Assistant Collector of the first or second class and direct it to excercise such powers in such cases, or such classes of cases only and within such local limits, as the Revenue Minister thinks fit.

[2][(4) (*a*) The Chairman of a Board established under subsection (1) shall preside over the sittings of the Board and shall be responsible for the conduct of its work. All orders made and summons, notices and other processes issued on behalf of the Board shall be signed by him.

(*b*) The quorum of the Board shall be two or such larger number as the Revenue Minister may by a general or special order direct.

(*c*) When the Chairman and the members of a Board are not unanimous, the opinion of the majority shall prevail, and if the Board is equally divided, the Chairman shall have a casting vote.

(5) Any order passed by a person or Board empowered under sub-section (1) shall, for all purposes be deemed to be the order of a Revenue Officer or Revenue Court, as the case may be, having the same powers as are conferred on such person or Board.]]

Administrative Control, Appeal, Review and Revision.

86. In regard to all matters relating to —

Administrative control, appeal, review and revision.

(*a*) the general superintendence and control of Revenue Officers;

1. Substituted *vide* Act VIII of 2011 for "two or more persons".
2. Sub-sections (4) and (5) of section 85-A substituted *vide* Act VIII of 2011.

(*b*) power to distribute business under this Act, and to withdraw cases pending before a Revenue Officer or Revenue Court ;

(*c*) appeals from the order or decree of a Revenue Officer or a Revenue Court ;

(*d*) limitation of such appeals ;

(*e*) review by a Revenue Officer or Revenue Court of an order passed by himself or itself or predecessors in office ; and

(*f*) revision of proceedings, order or decree of a Revenue Officer or Revenue Court ;

the provisions [1][x x x] of the Jammu and Kashmir Land Revenue Act, 1996, [2][shall apply to the proceedings, decrees or order of Revenue Officers, whether exercising jurisdiction as such or as Revenue Courts under this Act :]

[3][Provided that, an appeal from an original or appellate order or decree of the Collector in suits mentioned in section 85 shall lie to the High Court and shall be heard by a single Judge and any further appeal if maintainable under the provisions of the Code of Civil Procedure, 1977, shall be heard by a Division Bench of the High Court on a point of law only.]

Miscellaneous.

Procedure of Revenue Courts.

87. The Code of Civil Procedure for the time being in force in the State shall, as far as may be consistent with the provisions of this Act, regulate the proceedings of Revenue Courts in matters under this Act.

88. In regard to the following matters, namely :—

(*a*) rules relating to the procedure of Revenue Officers ;

(*b*) appearances before and applications to Revenue Officers and Revenue Courts ;

(*c*) costs ;

(*d*) power of Revenue Officers or Revenue Courts to summon persons ;

1. Words and figures "of section 9, 10, 11, 12, 13, 14, 15 and 16" deleted *vide* Act XIII of 1996.

2. Substituted *vide* Act XI of 2001 for "shall apply to the proceedings of Revenue Officers or Revenue Courts under this Act".

3. Proviso to S. 86 substituted *vide* Act XX of 2009.(For earlier amendments see Acts XIII of 1996, XX of 1996 and Notification No. S-37 of 1986).

(*e*) mode of service of summons ;
(*f*) mode of service of notice, order or proclamation ;
(*g*) mode of making proclamation ;
(*h*) place of sitting of Revenue Officers or Revenue Courts ;
(*i*) holidays ; and
(*j*) retention of powers by Revenue Officers on transfer, the provisions [1][x x x] of the Jammu and Kashmir Land Revenue Act, 1996, shall apply to the proceedings of Revenue Officers or Revenue Courts under this Act.

Joinder of tenants as parties to proceedings relating to rent.

89. (1) Any number of tenants cultivating in the same estate may, in the discretion of the Revenue Officer or the Revenue Court be made parties to any proceeding under Chapter III.

(2) But a decree or order shall not be made in any such proceeding unless the Revenue Officer or Revenue Court is satisfied that all the parties thereto have had an opportunity of appearing and being heard.

(3) A decree or order made in any such proceeding shall specify the extent to which each of the tenants is affected thereby.

Payment into Court of money admitted to be due to third person.

90. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded by it, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff, and therein obtains an order restraining payment of the money, it shall be paid to the plaintiff on his application to the Court therefor.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

1. The words and figures "of sections 17, 18, 19, 20, 21, 22, 23, 24 and 26' peleted *vide* Act XIII of 1996.

(5) When a defendant pays money into Court under this section, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Execution of decrees for arrear of rent.

91. A Court passing a decree for an arrear of rent may, on the oral application of the decree holder, order execution thereof against the movable property of the tenant, and against any uncut or ungathered crops on the tenancy in respect of which the arrear is decreed.

Prohibition of imprisonment in execution of decree for arrear of rent.

92. A tenant shall not, during the continuance of his occupancy, be liable to imprisonment on the application of his landlord in execution of a decree for an arrear of rent.

Power to refer party to Civil Court.

93. (1) If in any proceeding pending before a Revenue Court exercising original, appellate or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, require, by order in writing, any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court for the purpose of obtaining a decision on the question, and if he fails to comply with the requisition, may decide the question as it thinks fit.

(2) If the party institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be.

(3) *Mutatis mutandis* the provisions of sub-sections (1) and (2) shall be applicable, if in any proceeding pending before a Civil Court, it appears to the Court that it is necessary to decide any matter, which under the provisions of section 85 (3) of this Act should be heard and determined by a Revenue Court.

Power to refer to High Court of Judicature question as to jurisdiction.

94. (1) If in any suit, application or appeal filed in a Civil or Revenue Court, the Court doubts whether such suit, application or appeal should be filed in a Civil or a Revenue Court, it may submit the record, with a statement of the reasons for its doubt through the Courts to

which it is subordinate, to the [1][High Court of Judicature].

(2) If the Court is a Revenue Court subordinate to the [2][Commissioner] no such reference shall be made except with the sanction of the [2][Commissioner] previously obtained.

(3) On any such reference being made, the [1][High Court of Judicature] may order the Court either to proceed with the cases, or to return the plaint, application, or appeal for presentation to such other Court as it may declare to be competent to try the same.

(4) The order of the [1][High Court of Judicature] on any such reference shall be final.

Power of High Court of Judicature to validate proceedings under mistake as to jurisdiction.

95. (1) In either of the following cases, namely :—

(*a*) if it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in section 85 which under the provisions of that section should have been heard and determined by a Revenue Court, or

(*b*) if it appears to a Revenue Court that a Court under its control has determined a suit with should have been heard by a Civil Court,

the Civil Court or Revenue Court, as the case may be, shall submit the record of the suit to the [1][High Court of Judicature].

(2) On the perusal of the record, the [1][High Court of Judicature] may pass such order as it thinks fit, and may direct its order to such Court as it may declare to be competent to determine the suit, or, if it appears to the [1][High Court of Judicature] that the suit was so determined in good faith, and that the parties have not been prejudiced by the mistake as to jurisdiction, the [1][High Court of Judicature] may order that the decree be registered in the Court which has jurisdiction.

(3) If it appears to the [1][High Court of Judicature] otherwise than on submission of a record under sub-section (1) that Civil Court under its control has determined a suit of a class mentioned in section 85 which under the provision of that section should have been heard and determined by a Revenue Court, the [1][High Court of Judicature] may pass any order

1. Substituted for "High Court" *vide* Revenue Department Notification No. S-36 dated the 11th May, 1989, published in the Government Gazette dated 10th Jeth ,1986.
2. Substituted *vide* Act XIII of 1996 for "Revenue Member."

which it might have passed if the record had been submitted to it under that sub-section.

(4) With respect to any proceeding subsequent to decree, the [1][High Court of Judicature] may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper.

(5) An order of the [1][High Court of Judicature] under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered.

[2][**96.** The Government may after previous publication make such rules as may be necessary for the purpose of giving effect or carrying out the provisions of this Act and for the guidance of Revenue Officers and Courts.]

Power to make rules.

CHAPTER IX.

EFFECT OF THIS ACT ON RECORDS-OF-RIGHTS AND AGREEMENTS.

97. An entry in any record-of-rights providing—

Nullity of certain entries in records-of-rights.

(*a*) that a landlord may prevent a tenant from making or eject him for making, such improvements on his tenancy as he is entitled to make under this Act, or

(*b*) that a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would, under this Act be entitled to compensation thereof, or

(*c*) that a landlord may eject a tenant otherwise than in accordance with the provisions of this Act,

shall be void to that extent.

1. Substituted for "High Court" *vide* Revenue Department Notification No. S-36 dated 11th May, 1929 published in the Government Gazette dated 10th Jeth, 1986.

2. Section 96 substituted *vide* Act XIII of 1996.

Nullity of certain agreements contrary to this Act.

98. (1) Nothing in any agreement made between a landlord and a tenant after the passing of the Act shall—

(*a*) override any of the provisions of this Act with respect to the acquision of a right of occupancy, or the reduction, remission or suspension of rent, or the enhancement of the rent of a tenant having right of accupancy,

(*b*) take away or limit the right of a tenant as determined by this Act to make improvements, and claim compensation therefor, or, where compensation for disturbance can be claimed under this Act, to claim such compensation, or

(*c*) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in clause (*a*) of sub-section (1) shall apply to an agreement by which a tenant binds himself to pay an enhanced rent in consideration of an improvement made at the expense of his landlord, and to the benefit of which the tenant is not otherwise entitled.

Saving of other agreements when in writing.

99. Save as expressly provided in this Act, nothing in this Act shall affect the operation of any agreement between a landlord and a tenant, when the agreement either is in writing or has been recorded in a record-of-rights before the passing of this Act or has been entered by order of a Revenue Officer in a record-of-rights or annual record.

APPENDIX A.

Clause.	Description.	Tehsil or District to which this rule is applicable.	Section of rules or other authority.	Explanation.
	PART I.—JAMMU PROVINCE.			
(*a*)	Tenants who settled in the village with the founders thereof, and held continuous possession up to the time of the 1st Regular Settlement.	Kathua and Jasmergarh Tehsils, Udhampur and Reasi Districts, Basohli Tehsil.	Section 1 ,, 1 (*b*)	
(*b*)	Tenants who at the time of the Ist Regular Settlement had held continuous possession of land for two generations.	Kathua and Jasmergarh Tehsils.	,, 1	
(*c*)	Tenants who were recorded at General Devi Singh's Settlements of the Jasrota District in Samvat 1935-37 as possessing ploughs, and who thereafter held continuous possession upto the time of the 1st Regular Settlement.	do	,, 4	
(*d*)	Tenants who being "Udharach" cultivators had, at the time of 1st Regular Settlement, held continuous possession for not less than 10 years.	do	,, 5	"Udharach" cultivators means tenants who migrate from the *Kandi* tracts to cultivate lands in the Andhar tracts with

Clause	Description.	Tehsil or District to which this rule is applicable.	Section of rules or other authority.	Explanation.
				ploughs supplied by the landlords and whose cultivating occupancy is ordinarily continuous from year to year, the leader of each party being known as "*Halardar*".
(*e*)	Tenants who, before the date of the 1st Regular Settlement had been daclared by judicial decision, or by the order of a competent Revenue Officer, or by the order of His Highness the Maharaja Sahib, to be occupancy-tenants.	Jammu and Mirpur Districts, Reasi and Udhampur Districts and Basohli Tehsil.	Section 1 ,, 1(*a*)	
(*f*)	Tenants who, before the date of the 1st Regular Settlement, had been declared to be occupancy-tenants by agreement with the landlords.	Jammu and Mirpur Districts, Reasi and Udhampur Districts, and Basohli Tehsil.	,, 1 ,, 1(*a*)	
(*g*)	Tenants who were recorded as tenants in the Settlement records of Samvat 1926-1928, with or without description of title, and thereafter held continuous possession up to the time of the 1st Settlemention.	Jammu and Mirpur Districts, Reasi and Udhampur Districts, and Basohli Tehsil.	,, 2 ,, ?	

(*h*) Tenants who held possession in Samvat 1926-1928 but were erroneously omitted from the records of the Settlement of that year, and who thereafter held continuous possession upto the time of the 1st Regular Settlement.	Jammu and Mirpur Districts, Reasi and Udhampur Districts, and Basohli Tehsil.	,, 3 ,, 3		
(i) *Lahridars*, who received grants of waste land, whether the property of the State or village common land, and, having reclaimed it at their own expence, held continuous possession up to the time of 1st Regular Settlement; or who, received grants of cultivated land and held continuous possession from the date of the grant until the time of the 1st Regular Settlement.	Jammu and Mirpur Districts, Reasi and Udhampur Districts, and Basohli Tehsil.	,, 4 ,, 4		"*Lahridar* means a person in Military employment; as sepoy or *sowar* who received from the State a grant of land prior to the Samvat year 1945, such land remaining free from assessment until the year Samvat 1945.
(*j*) *Muafidars*, who at the date of the 1st Regular Settlement, had held continuous possession of land comprised in the *Muafi* for not less than 25 years without interference by landholder.	Jammu and Mirpur Districts, Reasi and Udhampur Districts, and Basohli Tehsil.	,, 5 ,, 5		
(*k*) Chaudhri Mansabadar, in regard to lands known as Dag Sarkari of which he was placed in possession between the years 1939 and 1946, and of which he remained in cultivating possession at the time of 1st Regular Settlement.	Samba Tehsil.	,, 1-2		"Dag Sarkari" means land, which having deserted at the famine of 1934, was not alloted to any-plough at the Settlement of 1939, and

Clause.	Description.	Tehsil or District to which this rule is applicable.	Section of rules or other authority.	Explanation.
				being made over to Claudhri Mansabdar, was reclaimed by Bawaris settled by him thereon, or by tenants at will under him.
(*l*)	Bawaris, who were placed by Chaudhri Mansabdar in possession of Dag Sarkari between the years 1939 and 1946 and who at the time of the 1st Regular Settlement remained in cultivating occupancy thereof.	Samba Tehsil.	Section 1-2	
(*m*)	Tenants who were given land for cultivation on payment of rent, by agreement with the proprietor in Samvat 1934 and who thereafter held continuous possession upto the time of the 1st Regular Settlement provided that there was no contract or agreement debarring them from rights of occupancy in such land.	Jammu Tehsil, Akhnoor Tehsil, and Mirpur District. Reasi and Udhampur Districts and Basohli Tehsil.	,, 6 ,, 6 ,, 4	
(*n*)	Tenants who during or shortly after the famine of 1934 were placed in possession of land by any written order or *Parcha* granted by an officer of the State and who thereafter held continuous possession up to the time of the 1st Regular Settlement.	Jammu and Akhnoor Tehsil and Mirpur District. Reasi and Udhampur Districts and Basohli Tehsil.	,, 7 ,, 7	

(o) In villages which were not previously surveyed or of which no survey files were forthcoming, tenants who cultivated land continuously on behalf of the proprietors or on behalf of the State for 15 years prior to the date of the first Regular Settlement.	Jammu and Akhnoor Tehsils and Mirpur District.	,,	8
	Reasi and Udhampur Districts and Basohli Tehsil.	,,	8
(p) In estates of which the proprietary right is vested in the Durbar, persons not being *Assamis* of *Malguzars* holding directly from the State, and possessing Parchas of the Settlement of Samvat 1926.	Mirpur Tehsil.	State Council Resolution dated 30th Baisakh, 1955 and section 2 of rules.	
(q) Tenants holding land under persons described in the preceding clause on payment of rent in kind or in cash, and posse-sing *Parchas* of the Settlement of Samwat 1926.	do	State Council Resolution dated 30th Baisakh, 1955 and section 2 of rules.	
(r) Tenants helding land on payment of rent under the State, who have received a right of occupancy under Ailan No. 4 dated 9th Jeth, 1969.	All districts.		
(s) Tenants who by mutual agreement with the proprietor have been recorded as occupancy-tenants since the completion of the 1st Regular Settlement.	do.		
(t) Tenants entitled to a right of occupancy under any of the above clauses, but holding land from occupancy-tenants of a higher grade and not directly from the landholder.	do		

Clause.	Description.	Tehsil or District to which this rule is applicable.	Section of rules or other authority.	Explanation.
	PART II.—KASHMIR PROVINCE AND GILGIT AND LADAKH DISTRICTS.			
a)	Tenants who at the date of the 1st Regular Settlement had held continuous possession for not less than 12 years.	Muzaffarabad District, Illaqa Mirbehri Tehsil Khas.	1 (*a*)	State Council Resolution dated 9th October, 1897.
		Baltistan except Zanskar.	3 (*a*)	
		Ladakh and Zanskar.	*ii* (*c*)	
(*b*)	Tenants who at the date of the 1st Regular Settlement had acquired a right of occupancy by agreement with the landlord, or by the usage, or by the decree of a competent Court.	Muzaffarabad District.	1 (*b*)	
		Srinagar city.	1 (*b*)	
		Baltistan except Zanskar.	3 (*b*)	
		Ladakh and Zanskar.	*ii* (*b*)	
(*c*)	Tenants who were recorded as cultivators of land in the Khatounis prepared in Samvat 1945, or who although not so recorded prove that they were cultivators of land in that year, and who held continuous possession of such land upto the Samvat year 1956.	Srinagar city.	1 (*a*)	
(*d*)	Tenants who were recorded as cultivators of land at the 1st Regular Settlement, and who held possession of such land continuously up to the date of the second Regular Settlement.	Those parts of the Kashmir valley, including the Niabat of Gurez, of which a 2nd Regular Settlement was	11 (*a*)	For the purposes of this clause and of clause (e) the records of the 1st Regular Settlement include the

	completed before the year 1966.		annual record prepared in the Samvat year 1951.
(e) Tenants who having been recorded as cultivators of land at the last Regular Settlement, were illegally ejected therefrom before the date of the 2nd Regular Settlement, and having held the land continuously for not less than 10 years, at the time of the ejectment were reinstated in possession of their tenancies during the 2nd Regular Settlement.	As clause (*d*)	11 (*b*)	See note under clause (*d*).
(*f*) Tenants who at the date of the 2nd Regular Settlement had acquired a right of occupancy by virtue of any lawful agreement or usage.	As clause(d).	11 (*c*)	
(*g*) Tenants whose possession began not later than the Samvat year 1957, and who held possession continuously upto the date of the 1st Regular Settlement.	Deohri Khas Jagir estates.	Proposed.	As proposed in Settlement Commissioner's No. 312 dated 21st Baisakh, 1916, to Revenue Minis ter. The 1st Regular Settlement is that of which the operations began in the year 1971.
(*h*) Tenants who settled in an estate with the founders thereof.	Baltistan.	3 (*a*)	
(*i*) Tenants whs were recorded as cultivators of land of the Settlement of Samvat 1942, and	Ladakh.	*ii* (*a*)	

Clause.	Description.	Tehsil or District to which this rule is applicable.	Section of rules or other authority.	Explanation.
	who continuously held possession of such land up to the date of the 1st Regular Settlement.			
(j)	Tenants whose possession began not later than the Samvat year 1958, and who continuously held possession up to the date of the Second Regular Settlement.	Gilgit District.	Proposed.	As proposed in Settlement Commissioner's No 312 dated 21st Baisakh, 1916, to the Revenue Minister.

APPENDIX B.

The dates shown in the following table are prescribed for proceedings under Chapter IV of this Act.

1	2	3	[1]4	5
Province.	Name of district or Illaqa.	Latest date for service of notice of relinquishment [section 41 (2)].	Time for ejectment (Sections 46 [2][*] and 53).	
			Begins.	Ends.
Jammu.	(*a*) Mirpur, Bhimber, Akhnoor, Jammu, Ranbirsighpura, Samba, Jasmergarh and Kathua.	15th Phagan.	1st Jeth.	15th Har.
	(*b*) Kotli, Rampur (except Barfani circle), Reasi (except Barfani circle), Ramban (except Barfani and Banihal circles), Ramnagar (except Barfani circle), Udhampur (except Barfani circle), Basohli (except Barfani circle).	15th Phagan.	1st Jeth.	15th Har.

1. Original columns 4 and 5 deleted and columns 6 and 7 renumbered as columns 4 and 5 respectively *vide* Act XIII of 2007.
2. Figures "50" deleted *vide* Act XIII of 2007.

1	2	3	4	5
Province.	Name of district or Illaqa.	Latest date for service of notice of relinquishment [section 41 (2)].	Time for ejectment (Sections 46, [2][*] and 53).	
			Begins.	Ends.
	(*c*) Rampur (Barfani circle), Reasi (Barfani circle), Ramban (Barfani and Banihal circles), Udhampur (Barfani circle), Ramnagar (Barfani circle), Basohli (Barfani circle), and Kishtwar.	15th Bhadon.	15th Assuj.	15th Katik
Kashmir.	(*d*) The whole.	15th Bhadon.	15th Assuj.	15th Katik.
	(*e*) Gilgit District.	15th Bhadon.	15th Assuj.	End Katik.
Frontiers.	(*f*) Ladakh.	15th Bhadon.	15th Assuj.	15th Katik.
	(*g*) Baltistan.	15th Bhadon.	15th Assuj.	15th Katik.

1. Original columns 4 and 5 deleted and columns 6 and 7 renumbered as columns 4 and 5 respectively *vide* Act XIII of 2007.
2. Figures "50" deleted *vide* Act XIII of 2007.

[1][APPENDIX 'C'.]

FORM OF APPLICATION BY THE LANDLORD.

(*See section* 49).

(*i*) Name and description of tenants.

(*ii*) The area and the description of land in possession of each tenant.

(*iii*) The land owned by the tenant and also other land occupied by the tenant with area and description.

(*iv*) Total land owned by the landlord and the area and description of that already in his personal cultivation together with that held by him as tenant of another owner.

(*v*) If the landlord was not cultivating before, reasons for his now wishng to resort to personal cultivation.

(*vi*) Other sources of income of the landlord.

[(*vii*) The number of the dependants of the landlord with names and description.

(*viii*) The number of dependants of each tenant with their names and description.

(*ix*) Other sources of income, if any, of the tenant.

1. Appendix 'C' inserted *vide* Act XII of 1955.

THE AGRICULTURISTS' RELIEF ACT, 1933 (1926 A. D.)

Act No. 1 of 1933.

CONTENTS.

SECTION.

Preamble.

CHAPTER I.

PRELIMINARY.

1. Short title, commencement and extent.

2. Definitions.

CHAPTER II.

SCOPE OF THE ACT AND JURISDICTION OF COURTS.

3. Application of Act to certain suits.

4. Jurisdictien to hear certain suits.

5. Appeals.

5-A. Superintendence of appeals to and revision by Special Judges.

6. Pending suits.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURITSTS ARE PARTIES.

7. Omitted.

8. History of transactions with agriculturist-debtors to be investigated.

9. Mode of taking accounts.

SECTION.

10. Agriculturist-debtors may sue for accounts.

11. Decree under section 10 shall provide for payment by instalments.
Execution of decrees under this section.

12. Payment into Court in cases under section 10.

13. Instalments.

14. Instalments to be within paying capacity of judgement-debtor.

15. Limit of further interest.

CHAPTER IV.
MISCELLANEOUS.

16 Term within which suit to be instituted.

17. Bar of application of Order 21, rule 2 (3) of the Code.

18. The Civil Courts Act and Civil Procedure Code to apply to proceedings under this Act.

19. Bar of application of the Small Cause Court Act and the Usurious Loans Act.

20. Court-fee on plaints under section 3, clause (a).

21. Power to make rules.

22. Rules to be published.

THE AGRICULTURISTS' RELIEF ACT, 1983 (1926 A. D.)

Act No. 1 of 1983.

[*Sanctioned by His Highness the Maharaja Bahadur in Council* vide *State Council Resolution No.* 96, *dated 5th July*, 1926, *and published in the Government Gazette dated 4th Sawan*, 1983.]

An Act for the Relief of Indebted Agriculturists.

Preamble.

WHEREAS it is expendient to relieve the agricultural classes from indebtedness ; It is hereby enacted :—

CHAPTER I.

PRELIMINARY.

Short title.

1. (*a*) This Act may be called the Agriculturists' Relief Act, 1983.

Commencement.

(*b*) It shall come into force on and from the fifteenth day of Sawan, 1983,

Extent.

[1][(*c*) It extends to the Provinces of Jammu and Kashmir only in the first instance by [2][the Government] may, by notification, extend all or any of the provisions of this Act to any [3]other local area within the State, and may also, by notification, exempt any local area, or class of persons, suits or transactions from all or any of the provisions of this Act.]

Definitians.

2. In this Act unless there is something repugnant in the subject or context,—

[1][(1) "agriculturist" means a person who, by himself or by his servants or by his tenants, earns his livelihood wholly or principally by agriculture, or by horticultural or pastoral pursuits, carried on within the limits of the State (including *Illaqa* of Poonch and the Jagir of Chenani) or who, within such limits, ordinarily engages personally in agricultural labour or such pursuits ; and includes a *Lohar*, a *Tarkhan*, and a *Kumhar* who, within such limits, is wholly or principally dependent on a share of the agricultural produce given to him on

1. Sections 1(c) and 2(1) substituted by Notification No, 17-L/83 published in the Government Gazette dated 21st Maghar, 1983.
2. Substituted for "His Highness the Maharaja Bahadur in Council" *vide* Act X of of 1996.
3. Extended to Frontier Districts *vide* Notification No. 5-L/1993 published in the Government Gazette dated 15th Phagan, 1993.

account of his services to agriculturists' in his capacity of a *Lohar, Tarkhan or Kumhar* ;

EXPLANATION.—(*a*) An "agriculturist' who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by such labour or pursuits, or who is prevented from so earning his livelihood or so engaging in such labour or pursuits by age or by bodily infirmity or by necessary absence due to service in the non-commissioned ranks of [1][* * *] Indian Army [2][* * * * * *] or due to service in a Civil Department under the Government or the Government of India when emoluments of such service do not exceed twenty-five rupees per mensem, does not thereby cease to be an "agriculturist" within this definition ;]

(*b*) an assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

(2) "the Court", when used with reference to any suit or proceeding, means the Court competent under this Act to hear such suit or proceeding ;

[3][(3) "money" includes cash, agricultural, horticultural or pastoral produce, livestock and articles made from such produce or livestock by the agriculturist or his family and also the implements of his avocation] ;

(4) "notification" means a notification publisned in the Jammu and Kashmir Government Gazette ; and

(5) all other expressions used but not defined in this Act shall, if defined in the [4] Jammu and Kashmir Land Revenue Regulation, 1980, or the Jammu and Kashmir Tenancy Act, 1980, have the meanings respectively assigned to such expressions in the said Regulation or Act.

CHAPTER II.

SCOPE OF THE ACT AND JURISDICTION OF COURTS.

Application of Act to certain suits.

3. Except as may hereinafter be otherwise provided, the provisions of this Act apply to —

(*a*) suits for an account instituted by an agricultutist under the provisio''s hereinafter contained ; and

(*b*) suits, in which the defendant, or any one of the defendants, is an agriculturist, for the recovery of money alleged to be due to the plaintiff.

1. Words "His Majesty" omitted *vide* A.L O 2008.
2. Words "or of His Highness' Army" omitted *vide* Act X of 2010.
3. Section 2 (3) substituted by Notification No. 17-L/83 published in the Government Gazette dated 21st Maghar, 1983.
4. Land Revenue Act XII of 1996.

——on account of money lent or advanced to, or paid for, the defendant, or as the price of goods sold, or

——on an account stated between the plaintiff and the defendant, or

——on a written or unwritten engagement for the payment of money not hereinbefore provided for.

Jurisdiction to hear certain suits.

4. (1) The Court of a Subordinate Judge shall have jurisdiction to hear, irrespective of the amount or value of the subject-matter, all suits to which this Act applies.

(2) Save as otherwise provided in [1][sub-section (3)] and notwithstanding anything to the contrary in section 16 of the Jammu and Kashmir State Small Cause Courts Act, 1968, no Court exercising jurisdiction under the said Act and no Court inferior to the Court of a subordinate Judge shall hear any such suit.

[2][(3) The High Court of the Jammu and Kashmir State may, by notification, empower any Munsiff or Tehsildar to hear all or any such suits the amount or value of the subject-matter of which does not exceed five hundred rupees, and may likewise subject to the aforesaid limit of five hundred rupees, determine the jurisdiction of the Munsiff or Tehsildar so empowered.]

Appeals.

[3][**5.** (1) No appeal shall lie from any decree passed in a suit to which this Act applies, when the amount decreed exclusive of further interest allowed by the decree on such amount does not exceed five hundred rupees and the decree is passed by a Subordinate Judge, or when such amount does not exceed one hundred rupees and the decree is passed by a Munsiff or Tehsildar empowered under section 4, sub-section (3) :

Provided that, nothing herein contained shall be deemed to affect the right of appeal from a decision under section 47 of the Code of Civil Procedure directing the arrest or detention in a civil prison of any person in execution of a decree.

(2) One appeal and one only shall lie to the Subordinate Judge from the decree passed by a Munsiff or Tehsildar empowered under section 4, sub-section (3), in a suit to which this Act applies when the amount decreed exclusive of further

1. In section 4(2) "sub-section (3)" substituted for words "this Regulation" *vide* Notification *No*. 17-L/83.

2. Sub-section (3) substituted for proviso by Notification 17-L/83 as amended by Notification *No*. 3-L/85 published in the Government Gazette dated 21st Maghar, 198, and 8th Bnadon 1985 respectively.

3. Section 5(1), (2) and (3) substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar, 1983.

interest allowed by the decree on such amount exceeds one hundred rupees but does not exceed five hundred rupees :

Provided that, nothing herein contained shall affect section 24 of the Code of Civil Procedure.

(3) No appeal shall lie from any order passed by the Court in any such suit with the exception of the order specified in clause (*h*) of sub-section (1) of section 104 of the Code of Civil Procedure.]

[1][(4) The appeal from the decree passed by a Subordinate Judge shall lie when the amount decreed exclusive of further interest allowed by the decree on such amount exceeds five hundred rupees but does not exceed two thousand and five hundred rupees, to the District Court, and, when it exceeds two thousand and five hundred rupees, to the High Court.]

Superintendence of appeals to and revision by Special Judges.

[1][**5-A.** (1) [2][The Government] may from time to time appoint a Special Judge or judges for any local area to inspect supervise and control in the place of the District Judge the proceedings of all Courts empowered under section 4 in any suit of the description mentioned in section 3 or any appeal under section 5, and may cancel any such appointment.

(2) Any appeal which lies under section 5 to a Subordinate Judge or the District Court may be heard and determined by such Special Judge.

(3) Such Special Judge may withdraw any such suit, appeal or proceeding pending before any Subordinate Judge, Munsiff or Tehsildar and may either transfer it to any other Court of equal or superior jurisdiction competent to determine it under this Act or may himself determine it in accordance with the provisions of this Act.

(4) Such Special Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by any Subordinate Judge, Munsiff or Tehsildar in any such suit or any such appeal or as to the regularity of the proceedings therein, call for and examine the record of such suit, appeal or proceeding and pass such order thereon as he thinks fit :

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

(5) No appeal shall lie from any decree or order passed

1. Seection 5(4) and section 5-A added by Notification No. 8-L/84 published in the Government Gazette dated 9th Bhadon, 1984.
2. Substituted for "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

by such Special Judge under sub-section (2), (3) or (4) but High Court may exercise its powers of revision under section 115 of the Code of Civil Procedure, 1977, with regard to any such decree or order.

(6) Such Special Judge may refer to the High Court under section 113 of the Code of Civil Procedure, 1977, any question of law, or usage having the force of law, or the construction of a document arising in any case pending before him under sub-section (2), (3) or (4) as if that case were a suit or an appeal pending before him ; and in respect of every reference so made, the provision of Order XLVI of said Code shall apply.

(7) If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

Pending suits.

6. The provisions of this Act apply also to all suits mentioned in section 3 which, though instituted before the date on which this Act comes into force, are pending in any Court of first instance on such date and, if such Court is not competent under section 4 to hear any such suit, such suit shall be transfereed to and heard, in accordance with the provisions of this Act, by the Court competent to hear such suits under section 4.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

[1](7). Omitted.

History of transactions with agriculturist-debtors to be investigated.

8. In any suit of the description mentioned in section 3, clause (*b*), in which the defendant, or any one of the defandants, is an agriculturist,

the Court, if the amount of the creditor's claim is disputed, shall examine both the plaintiff and the defendant as witnesses . unless, for reasons to be recorded by it in writting, it deems it unnecessary so to do and shall enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through

1. Section 7 omitted by Notification 17-L/85 published in the Government Gazette dated 21st Maghar, 1983.

whom they claim out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court, for reasons to be recorded by it in writing, believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted, the Court shall be bound to enquire as aforsaid.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

Mode of taking accounts.

9. (1) When the Court enquires into the history and merits of a case under section 8, it shall, notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or otherwise detemining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions, and take that account according to the rules laid down in sub-section (2) :

Provided that, in the exercise of the powers conferred by this and the last preceding section the Court shall not re-open any agreement or contract purporting to close previous dealings and create a new obligation which has been entered into by the parties or the persons (if any) through whom they claim, or go behind and beyond a statement or settlement of account which is of a date prior to the first day of Baisakh, 1978 :

[1][Provided further that, nothing hereinbefore contained and nothing contained in section 10 shall be deemed to authorise the Court to re-open any agreement, contract or account when the account has been finally closed and settled between the parties or the aforesaid persons leaving no subsisting liabilities between them.]

1. Inserted by Notification 17-L/83 published in the Government Gazatee dated 21st Maghar, 1983.

(2) The Court shall take the account under sub-section (1) in accordance with the following rules, namely :—

(*a*) [1][In the account of principal] there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor as part of the transactsons, but not any accumulated interest which has been converted into principal at any statement or settlment of account or by any contract made in the course of the transactions :

Provided that, the Court shall allow such debit when such statement, settlement or contract is of a date prior to the first day of Baisakh, 1978.

[2](*b*) [1][In the account of interest] there shall be debited to the debtor monthly simple interest [3][on the balance of the principal for the time being outstanding] at the stipulated rate of interest or, in its absence, at the rate considered fair by the Court, not exceeding in either case twelve per centum per annum on such balance.

[4][× × × × × × × ×]

[2](*c*) All money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value, as the Court in its discretion, or with the aid of arbitrators appointed by, it may determine), [5][shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal].

(*d*) [6][The accounts of principal and interest] shall be made up to the date of instituting the suit and the [7][aggregate of the balances] (if any) appearing due [8][on both such accounts on that date] shall be deemed to be the amount due at that date ; [9][except when the balance appearing due on the interest-account exceeds one half of that appearing due on the principal-account, in which case the latter balance plus one half thereof shall be deemed to be the amount then due.] The party from whom this

1. Inserted by Notification 17-L/83 published in Government Gazette dated 21st Maghar, 1983.
2. Original clauses (b) and (c) relattered as (c) and (b) respectively *vide ibid.*
3. Substituted for certain words by Notification 17-L/83 publihsed in the Government Gazette dated 21st Maghar, 1983.
4. Proviso to clause (b) omitted *vide ibid.*
5. Substituted for "shall be credited to the debtor" *vide ibid.*
6. Substituted for certain words *vide ibid.*
7. Substituted for "balance" *vide ibdi.*
8. Substituted for certain words *vide ibid.*
9. Inserted *vide ibid.*
10. Substituted for "(b)" *vide ibid.*

amount is thus found due shall be bound to repay it, whether such party is a plaintiff or a defendant in the suit, and the Court shall by its decree declare and direct accordingly.

(*e*) For the purposes of clauses (*a*) and [1][(*c*)] the value of the produce for which a record of prices is kept in the local Tehsil office shall be debited or credited as the case may be, at such rates for the month during which such produce was sold, advanced, supplied or received.

10. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price for goods sold, or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by or to him to or by the creditor.

Agriculturist-debtors may sue for accounts.

When any such suit is brought the amount (if any) payable by the plaintiff or the defendant shall be determined under the same rules as would be applicable under this Act, if the creditor had sued the plaintiff for recovery of the debt.

Amount of debts in such cases to be determined according to foregoing provisions.

11. A [2][decree passed *ex parte* or otherwise] under section 10 shall, besides, declaring the amount due, direct that such amount shall be paid in one or more instalments, with or without interest, and, judgment-debtor may pay the amount of such decree, or the amount of each instalment fixed by such decree as it falls due, into Court, in default whereof execution of the decree may be enforced by the decree-holder in the some manner as if he had obtained a decree in a suit to recover the debt.

Decree under section 10 shall provide for payment by instalments.

Execution of decrees under this section.

12. The plaintiff in any suit instituted under section 10 may at any stage of such suit deposit in Court such sums of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum deposited from the date of the receipt of such notice whether

Payment nto Court in cases under section 10.

1. Substituted for "(*b*)" *vide ibid.*
2. Substituted for "decree" passed by Act XI of 1988.

the sum deposited be in full satisfactation of the claim or fall short thereof.

Instalments.

13. In cases other than those provided for in section 11 at the time of passing a [1][decree *ex parte* or otherwise] against an agriculturist in a suit to which this Act applies, the Court shall by such decree direct that the amount of the decree shall be paid in one or more instalments, with or without interest.

Instalments to be within paying capacity of judgment-debtor.

14. The number, amount and intervals for the payment of the instalments fixed by the Court under section 11 or 13 shall be fixed within the paying capacity of the judgment-debtor :

[2][Provided that, —

(*a*) the whole of the unrealized balance of the decretal amount shall be recoverable in lump at once in case default is made by the judgment-debtor in the payment of two or more consecutive instalments unless such default was due to abnormal circumstances beyond the control of the judgment-debtor which in the opinion of the Court executing the decree entitled the judgment-debtor to an extension in the period of instalments ;

(*b*) the Court which passed the decree or to which the decree is transferred for execution, if it is satisfied that a substantial change has taken place in the paying capacity of the judgment-debtor may, on the application of the decree-holder or the judgment-debtor from time to time vary the number and alter the amount of instalments fixed by the decree to suit the changed paying capacity of the judgment-debtor.]

EXPLANATION.—"Paying capacity" means the amount which the judgment-debtor can reasonably be expected to pay after providing for the exercise of his avocation and for the essential necessities of himself and of such members of his family as are dependent on him.

Limit of further interest.

15. The rate of further interest allowed in any decree passed in a suit to which this Act applies shall not exceed [3][twelve per centum] per annum and the aggregate amount of further interest so allowed shall not exceed one half of the amount decreed exclusive of costs.

---

1. Substituted for decree passed by Act XI of 1988.
2. Proviso to section 14 added by Act XI of 1988.
3. Substituted for "six per centum" by Notification 17-I./83 published in the Government Gazette dated 21st Magher, 1983.

CHAPTER IV.

MISCELLANEOUS.

Term within which suit to be instituted.

[1][**16.** A suit of the description mentioned in section 3 clause (*c*) may be instituted within six years from the date of the last transaction between the parties or persons claiming through them or from the date of the last balance struck between the parties of such persons, whichever is the later date].

Bar of application of Order 21, rule 2 (3) of the Code.

17. Sub-rule (3) of rule 2 of Order 21 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.

The Civil Courts Act and Civil Procedure Code to apply to proceedings under this Act.

18. Execept in so far as these are inconsistent with this Act, the provisions of the Code of Civil Procedure and the Jammu and Kashmir State Civil Courts Act, 1977, shall apply in all suits and proceedings before the Court under this Act. The Court exercising jurisdiction under section 4 shall for the purposes of the said Code, and the said Act be deemed inferior to the District Court.

Bar of application of the Small Cause Court Act and the Usurious Loans Act.

19. The provisions of the Jammu and Kashmir State Small Cause Court Act, 1968, and Usurious Loans Act, 1977, shall not apply to the proceedings of the Court under this Act.

Court-fee on plaints under section 3, clause (a).

20. The plaint in a suit under clause (*a*) of section 3 shall state the amount at which the relief sought in it is valued by the plaintiff and, subject to a minimum court-fees of five rupees shall be liable to the fee payable therefor under the Court Fees Act, 1977.

1. Section 16 substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar, 1983

21. The High Court with the sanction of [1][the Government] may, from time to time, make all such rules as he may deem necessary for carrying out the provisions herein contained.

Power to make rules.

22. All rules made under this Act shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

Rule to be published.

THE POLICE ACT, 1983. (1927 A. D.)

Act No. II of 1983.

CONTENTS.

Preamble.

SECTION.

1. Short title.
2. Commencement.
3. Repeal.
4. Interpretation clause.
5. Constitution of the force.
6. Superintendence in the Government.
7. Inspector General of Police, etc.
8. Appointment, dismissal, etc., of inferior officers.
9. Certificates to Police officers.
10. Police officer not to resign without leave or two months notice.
11. Police officers not to engage in other employment.
12. Power of Inspector General to make rules.

1. In section 21 the words "the Government" substitued for the words "His Highness the Maharaja Bhadur in Council" *vide* Act X of 1996.

NOTE :—See also Notification No. 11-L/84 published in the Government Gazette dated 9th Magher, 1984.

SECTION.

13. Additional Police officers employed at cost of individuals.

14. Appointment of additional force in the neighbourhood of railway and other works.

15. Quartering of additional police in disturbed or dangerous districts.

16. Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

17. Recovery of moneys payable under sections 13, 14, 15 and 16 and disposal of same when recovered.

18. Special Police officers.

19. Power of special Police officers.

20. Refusal to serve as special Police officers.

21. Authority to be exercised by Police officers.

22. Village Police officers.

23. Police officers always on duty and may be employed in any part of district.

24. Duties of Police officers.

25. Police officers may lay information, etc.

26. Police officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal.

27. Magistrate may detain property and issue proclamation.

28. Confiscation of property if no claimant appears.

SECTION.

29. Persons refusing to deliver up certificate, etc., on ceasing to be Police officers.

30. Penalties for neglect of duty, etc.

31. Regulation of public assemblies and processions, and licensing of same. Music in the streets.

32. Powers with regard to assemblies and processions violating conditions of licence.

33. Police to keep order in public roads, etc.

34. Penalty for disobeying orders issued under last three sections, etc.

35. Saving of control af District Magistrate.

36. Punishment for certain offences on roads, etc. Power of Police officers.

37. Jurisdiction.

38. Power to prosecute under other law not affected.

39. Rewards to Police and informers.

40. Plea that act was done under warrant.

41. Police officers to keep diary.

42. The Government may prescribe form of returns.

43. Scope of Act.

44. Authority of superintendent of Police over village police. Form.

THE POLICE ACT, 1983 (1927 A. D.)

Act No. II of 1983.

[*Sanctioned by His Highness the Maharaja Bahadur in Council*, vide *State Council Resolution No. CXVII*, *dated* 29*th January*, 1927. *Published in the Government Gazette dated* 22*nd Chet*, 1983.]

WHEREAS it is expendient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime ; It is hereby enacted as follows :—

1. This Act may be called the Police Act of 1983.

Short title.

[1]**2.** This Act shall come into force on and from the date of its third publication in the Jammu and Kashmir Government Gazette.

Commencement.

3. The Police Ain No. 1 of 1905 is hereby repealed.

Repeal.

4. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say,—

Interpretation clause.

the words"District Magistrate" shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled :

the word " Magistrate" shall include all persons within the general police district, exercising all or any of the powers of a Magistrate :

the word "police" shall include all persons who shall be enrolled under this Act :

the words "general police district" shall embrace the local area within the State, in which this Act shall be ordered to take effect :

the words "Superintendent" and "Superintendent of Police" shall include any Assistant Superintendent or other person appointed by general or special order of [2][the Govern-

1. The Act came into force from 6th Baisakh, 1984, the date of its third publication
2. In sections 4, 5, 6, 7, 8, 12, 14, 15, 16, 17, 26, 36, 42, 43 and 44 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur in Council' *vide* Act X of 1996.

ment] to perform all or any of the duties of a Superintendent of Police under this Act in any district or part of a district :

the word "property" shall include any movable property, money or valuable security :

words importing the singular number shall include the plural number and words importing the plural number shall include the singular number :

words importing the masculine gender shall include females :

the word "person" shall include a company or corporation:

the word "month" shall mean a Hindi calendar month :

the word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

Constitution of the force.

5. The entire police establishment under the general police district, shall, for the purposes of this Act, be and deemed to be one police force, and shall be formally enrolled ; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by '[the Government].

Superintendence in the Government.

6. No person, Court or officer shall have authority to appoint, supersede, or control any police functionary except as authorised by this Act :

Provided that, nothing herein contained shall be deemed to affect in any way the powers of superintendence and control vested in '[the Government].

Inspector General of Police, etc.

7. (1) The administration of the police throughout the general police district shall be vested in an officer to be styled the Inspector General of Police.

The administration of the police throughout the local jurisdiction of the District Magistrate shall, under the general control and direction of such Magistrate, be vested in a Superintendent and such Assistant and Deputy Superintendents as [1][the Government] shall consider necessary.

The Inspector General and the Superintendents of Police shall from time to time be appointed by [1][the Government]

1. See footnote under section 4.

and may be removed by the same authority.

The Assistant Superintendents and Deputy Superintendents shall from time to time be appointed by [1][the Government]and may be removed by the same authority.

[2][(2) The Government may from time to time appoint one or more officers to be designated as Deputy Inspectors General of Police for the discharge of such functions under this Act as may be assigned to them by the Inspector General of Police.]

Appointment, dismissal, etc, of inferior officers.

8. The appointment of all Police officers other than those mentioned in section 7 of this Act, shall under such rules, as [3][the Government] shall from time to time sanction, rest with the Inspector General and Superintendents of Police, who may under such rules as aforesaid at any time dismiss, suspend or reduce any Police officer, whom they shall think remiss or negligent in the discharge of his duty or unfit for the same ;

or may award any one or more of the following punishments to any Police officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:—

(*a*) confinement to quarters for a term not exceeding fifteen days, with or without punishment, drill, extra guard, fatigue or other duty ;

(*b*) deprivation of good conduct pay ;

(*c*) removal from any office of distinction or special emolument.

Certificates to Police officers.

9. Every Police officer so appointed shall receive on his appointment a certificate in the from annexed to this Act, under the seal of the Inspector General of Police or such other officer as the Inspector General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privleges of a Police officer.

Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a Police officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

A Police officer shall not by reason of being suspended from office cease to be a Police officer. During the term of

1. In section 7 "the Government" substituted for the words "Member-in-charge f the Police Department" *vide* Act X of 1996.

2. Existing section 7 nubered as sub-section (1) and sub-section (2) added *vide* Act, X LII of 2011.

3. See footnote under section 4.

such suspension the powers, functions and privilges vested in him as a Police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

Police officer not to resign without leave or two months' notice.

[1]**10.** No Police officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the Superintendent or by same other officer authorised to grant such permission or without the leave of the Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police officers not to engage in other employment.

11. No Police officer shall engage in any employment or office whatever other than his duties, under this Act, unless expressly permitted to do so in writing by the Inspector General.

Power of Inspector General to make rules.

12. The Inspector General of Police may, from time to time, subject to the approval of [2][the Government], frame such orders and rules as it shall deem expedient relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be preformed by them ; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them ; the collecting and communicating by them of intelligence and information ; and all such other orders and rules relative to the police force as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Additional police officers employed at cost of individuals.

13. It shall be lawful for the Inspector General of Police, or for the Superintendents, subject to the general direction of the District Magistrate, on the application of any person showing the necessity thereof, to depute any additional number of Police officers to keep the peace at any place within the general police district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of

1. See also Ordinance III of 2000.
2. See footnote under section 4.

the Superintondent, and shall be at the charge of the person making the application :

Provided that, it shall be be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector General or to the Superintendent, to require that the Police officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

Appointment of additional force in the neighbourhood of railway and other works.

14. Whenever any railway. canal or other public work, or any manufactory or commercial concern shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector General that the employment of an additional police force in such place is rendered necessary by the behaviour or reasonale apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawfull for the Inspectar General, with the sanction of '[the Government] to depute such additional force to such place and employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary and such person shall thereupon cause payment to be made accordingly.

Quartering of additional Police in disturbed or dangerous districts.

15. (1) It shall be lawful for '[the Government], by proclamation to be notified in the Jammu and Kashmir Government Gazette, and in such other manner as '[the Government] shall direct, to declare that any area within the State has been found to be in a disturbedor da ngerous state, or that, from the coduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector General of Police, or other officer authorised by '[the Government] in this behalf, to employ any police force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne

1. See footnote under section 44.

by the inhabitants of such area described in the proclamation.

(4) The District Magistrate, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for [1][the Government] by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as [1][the Government] may in each case think fit to direct.

EXPLANATION.—For the purposes of this section, 'inhabitants' shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein.

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

16. (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of injury or such shorter period as may be prescribed, an application for compensation to the District Magistrate or to the Sub-Divisonal Magistrate within the local limits of whose jurisdiction such area is situated.

(2) It shall thereupon be lawful for the District Magistrate with the sanction of [1][the Government] after such enquiry as he may deem necessary, and whether any additional police force has or has not been quartered in such area under the last preceding section, to;—

(*a*) declare the persons to whom injury has been

1. Seefootnote under section 4.

caused by or has ensued from such misconduct ;

(*b*) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them ; and

(*c*) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section :

Provided that, the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for [1][the Government], by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the District Magistrate under sub-section (2) shall be subject to revision by [1][the Government] but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) EXPLANATION.—In this section the word "inhabitants" shall have the same meaning as in the last preceding section,

Recovery of moneys payable under sections 13, 14, 15 and 16 and disposal of same when recovered.

17. (1) All moneys payable under section 13, 14, 15 and 16 shall be recoverable by the District Magistrate in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, for the recovery of fines, or by suit in any competent Court.

(2) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called "The General Police Fund" and shall be applied to the maintenance of the police force under such orders as [1][the Government] shall pass.

(3) All moneys paid or recovered under section 16 shall be paid by the District Magistrate to the persons to whom and in the proportions in which the same are payable under that section,

1. See footnote under section 4.

Special Police officers.

18. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful or any Police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as special Police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of special Police Officers.

19. Every special Police officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorties as the ordinary officers of police.

Refusal to serve as special Police officers.

20. If any person being appointed a special Police officer as aforesaid shall without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or directon as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

Authority to be exercised by Police officerss.

21. Police officers enrolled under this Act shall not exercise any authority, except the authority provided for a Police officer under this Act and any Act or law for the time being in force, for regulating criminal procedure.

Village Police officers.

22. Nothing in this Act shall affect any hereditary or other village Police officer, unless such officer shall be enrolled as a Police officer under this Act. When so enrolled such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police shall be enrolled without his consent and the consent of those who have the right of nomination.

23. Every Police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a Police officer in any part of the general police district.

Police officers always on duty and may be employed in any part of district.

24. It shall be the duty of every Police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority ; to collect and communicate intellingence affecting the public peace ; to prevent the commission of offences and public nuisances ; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists ; and it shall be lawful for every Police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters.

Duties of Police officers

25. It shall be lawful for any Police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence.

Police officers may lay information, etc.

26. (1) It shall be the duty of every Police officer to take charge of all unclaimed or ownerless property, and to prepare and furnish an inventory thereof to the District Magistrate or the Sub-Divisional Magistrate or other Magistrate of the 1st class having jurisdiction, empowered by [1][the Government] in this behalf.

Police officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

(2) Such inventory shall if possible be prepared when the Police officer takes charge of such property in the presence of two respectable persons of the locality.

27. (1) Such Magistrate may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Magistrate may detain property and issue proclamation.

(2) The provisions of [2]section 525 of the Code of Cri-

1. See footnote under saction 4.
2. Section 525 of the Code of Criminal Procedure, 1989.

minal Procedure, 1969, shall bea pplicable to property referred to in this section.

(3) If within the period limited in such proclamation any claim is preffered to such property or proceeds thereof such Magistrate may make such order as he thinks fit respecting the disposal of such property or proceeds or the delivery of such property or proceeds to the person, entitled to the possession thereof.

Confiscation of property fno claimant appears.

28. (1) If no person shall, within the period allowed, claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the preceding section, be sold under the orders of such Magistrate.

(2) The sale proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 27 to which no claim has been established shall be kept in deposit in the State Treasury for a period of two years. If within the above-mentioned period of two years, a suit is brought claiming such property or the sale proceeds thereof, the order of the civil Court competent to entertain and determine such suit regarding the disposal of such property or proceeds thereof shall be complied with. If no such suit is brought the deposit shall lapse to and remain at the disposal of the Government.

Persons refusing to deliver up certificate etc., on ceasing to be Police officer.

29. Every person having ceased to be an enrolled Police officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessaries which shall have beeen supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment for a period not exceeding six months, or to both.

Penalties for neglect of duty, etc.

[1]**30.** Every Police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or

1. See al so ordinance III of 2000.

who shall engage without authority in any employment other than his police duty, or shall be guilty of cowardice, or shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

Regulation of public assemblies and processions, and licensing of same.

31. (1) The Superintendent or Assistant Superintendent of Police may, as occassion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the District Magistrate or of the Sub-Divisional Magistrate, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licencees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section : Provided that, no fee shall be charged on the application for, or grant of, any such licence.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

Music in the streets.

Power with regard to assemblies and processions violating conditions of licence.

32. (1) Any Magistrate or Superintendent of Police or Assistant Superintendent of Police or Deputy Superintendent of Police or Inspector of Police or any Police officer in charge of a station may stop any procession which violates the conditions of a licence granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

Police to keep order in public roads, etc.

33. It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, *ghats* and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, *ghat* or landing place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last three sections, etc.

34. Every person opposing or not obeying the orders issued under the last three preceding sections, or violating the conditions of any licence granted by the Superintendent or Assistant Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding one hundred rupees.

Saving of control of District Magistrate.

35. Nothing in the last four preceding sections shall be deemed to interfere with the general control of the District Magistrate over the matters referred to therein.

Punishment for certain offences on roads, etc. Power of police officers.

36. Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by [1][The Government], commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding 8 days ; and shall be lawful for any Police officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

FIRST.—Any person who slaughters any cattle or cleans any carcass ; any person who rides or drives any cattle or vehicle recklessly or furiously, or trains or breaks any horse or other cattle :

Slaughtering cattle, furious riding, etc.

SECOND.—Any person who wantonly or cruelly beats, abuses or tortures any animals :

Cruelty to animals.

THIRD.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking

Obstructing passengers.

1. See footnote under section 4.

up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public :

Exposing goods for sale.

FOURTH.—Any person who exposes any goods for sale :

Throwing dirt into streets.

FIFTH.—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials : or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung-heap or the like :

Being found drunk or riotous.

SIXTH.—Any person who is found drunk or riotous or who is incapable of taking care of himself :

Indecent exposure of person.

SEVENTH.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose :

Neglect to protect dangerous places.

EIGHTH.—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure.

Jurisdiction

37. Any charge against a Police officer above the rank of a constable under this Act shall be enquired into and determined only by a Magistrate of first class.

Power to prosecute under other law not affected.

38. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Act or law for any offence made punishable by this Act, or from being liable under any other Act or Law or any other or higher penalty or punishment than is provided for such offence by this Act : Provided that, no person shall be punished twice for the same offence.

Rewards to Police and informers.

39. Rewards payable by law to informers shall, when the information is laid by a Police officer, be paid to the credit of the State under the Head "Police", but rewards payable by law for arrests shall, when the arrest is made by a Police officer, be paid to such officer.

Plea that act was done under warrant.

40. When any action of prosecution shall be brought or any proceedings held against any Police officer for any act done by him in such

capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of a warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine ; Provided always that, any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

Police officers to keep diary.

41. It shall be the duty of every officer-in-charge of a police-station to keep a general diary in such from as shall, from time to time, be prescribed by the Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The District Magistrate shall be at liberty to call for and inspect such diary.

The Government may prescribe form of returns.

42. [1][The Government,] may direct the submission of such returns by the Inspector General and other Police officers as may be deemed advisable and may prescribe the Form in which such returns shall be made.

Scope of Act.

43. (1) This Act shall not by its own operation take effect in any Province or place. But [1][the Government] by an order to be published in the Jammu and Kashmir Government Gazette may extend the whole or any part of this Act to any Province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such Province or place,

(2) When the whole or any part of this Act shall have been so extended, [1][the Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with this Act : -

(*a*) to regulate the procedure to be followed by Magis-

1. See footnote under section 4.

trates and Police officers in the discharge of any duty imposed upon them by or under this Act ;

(*b*) to prescribe the time, manner and conditions within and under which claims for compensation under section 16 are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon ; and

(*c*) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by [1][the Government].

Authority of Superintendent of Police over village police.

44. It shall be lawful for the [1][the Government] in carrying this Act into effect in any part of the State to declare that any authority which now is or may be exercised by the District Magistrate over any village watchman or other village Police officer for the purposes of police, shall be exercised, subject to the general control of the District Magistrate, by the Superintendent of Police.

FORM.

(*See section* 9.)

A. B. has been appointed a member of the police force under Act II of 1983, and is vested with the powers, functions and privileges of a Police officer.

---

[2]THE STATE SUBJECT DEFINITION NOTIFICATION.

DATED THE 20TH APRIL, 1977.

No. I-*L*/84.—The following definition of the term "State Subject" has been sanctioned by His Highness the Maharaja Bahadur (*vide* Private Secretary's letter No. 2354, dated, the

1. See footnote under section 4.
2. This Notification is to be read subject to the provisions contained in Part III of the constitution of Jammu and Kashmir.

31st January, 1927, to the Revenue Member of Council) and is hereby promulgated for general information

The term "State Subject" means and includes :—

CLASS I.—All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Gulab Singh Sahib Bahadur, and also persons who settled therein before the commencement of Samvat year 1942, and have since been permanently residing therein.

CLASS II.—All persons other than those belonging to Class I who settled within the State before the close of Samvat year 1968, and have since permanently resided and acquired immovable property therein.

CLASS III.—All persons, other than those belonging to Classes I and II permanently residing within the State, who have acquired under a *rayatnama* any immovable property therein or who may hereafter acquire such property under an *ijazatnama* and may execute a *rayatnama* after ten years' continuous residence therein.

[1][CLASS IV.—Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State Subjects.]

NOTE I.—In matter of grants of State scholarships, State lands for agricultural and house building purposes and recruitment to State service, State Subjects of Class I should receive preference over other classes and those of Class II, over Class III, subject, however, to the order dated 31st January 1927, of His Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

NOTE II.—The descendants of the persons who have secured the status of any Class of the State Subjects will be entitled to become the State Subjects of the same Class. For example if A is declared a State Subject of Class II his sons and grand-sons will *ipso facto* acquire the status of the same Class (II) and not of Class I.

1. Class IV and Note IV added *vide* Order No. 98-H/39, published in Government Gazette dated 27th Poh, 1996. By the same Order His Highness is further pleased to direct that, notwithstanding any law, rule or other order to the contrary, no disability as regards acquisition of any interest in land or other immovable property in the State shall attach to a company which is a State Subject within the meaning of Notification o. 1-L/84, dated 20th April, 1927, as amended.

[1]NOTE III. – The wife or a widow of a State Subject of any Class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.

[2][NOTE IV.– For the purposes of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notification as amended up to date shall be read as if such amended definition existed in this Notification as originally issued.]

THE INFANT MARRIAGES PREVENTION ACT, 1985 (1928 A. D.)

Act No. 1 of 1985.

CONTENTS.

Preamble.

SECTION.

1. Short Title.
   Extent and commencement.
   Exemptions.
2. Definitions.
3. Punishment for marrying an infant girl.
4. Punishment for causing infant marriage
5. Punishment for an old man marrying an infant girl.
6. Punishment for causing marriage of an infant girl with an old man.
7. Omitted.
8. Court competent to try offences under the Act.
9. Mode of taking cognizance of offences.
10. Power to take security from complainant.
11. Power to issue injunction prohibiting marriage in contravention of this Act.

---

1. Note III added *vide* Notification No 51-D/1989 as amended by Notification No. 6-L/1990 published in Government Gazette dated the 8th Baisakh, 1990 and Government Gazette dated the 23rd Bhadon, 1990, respectively.
2. See footnote nnder Class, IV.

THE INFANT MARRIAGES PREVENTION ACT, 1985
(1928 A. D.)
Act No 1 of 1985.

[*Sanctioned by His Highness the Maharaja Bahadur under endorsement No.* 2265, *dated the* 22*nd May*, 1928, *and No.* 304, *dated the* 14*th June*, 1928, *from the Secretary to the Cabinet. Published in the Government Gazette dated* 8*th Har*, 1985.]

An Act to prevent infant Marriages in the State of Jammu and Kashmir.

Preamble.

WHEREAS it is expedient to prevent infant marriages in the State of Jammu and Kashmir; His Highness is pleased to enact as follows:—

Short Title.

1. (1) This Act may be called "The Infant Marriages Prevention Act, 1985."

Extent and commencement.

(2) It shall extend to the whole of the State of Jammu and Kashmir [1][and it applies also to State Subjects and servants of the State in any part of India] and shall be brought into force from first Bhadon, 1985.

Exemptions.

(3) [2][The Government] may, by notification in the Jammu and Kashmir Government Gazette, exempt any community or class of persons or any class of marriages from all or any of the provisions of this Act.

2. For the purposes of this Act,—

Definitions.

(1) "infant girl" means a girl who has not completed fourteen years of age;

(2) "infant boy" means a boy who has not completed eighteen years of age; and

(3) "infant marriage" means the marriage of an infant girl or of an infant boy or between an infant girl and an infant boy.

Punishment for marrying an infant girl.

3. Any man who having completed eighteen years of age marries an infant girl shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

1. Inserted *vide* Act III of 2002.
2. Substituted *vide* Act VII of 2001 for "His Highness."

4. Any person who causes the marriage of an infant girl or of an infant boy, or who knowingly aids and abets within the meaning of the [1]Ranbir Dand Bidhi such a marriage, shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

Punishment for causing infant marriage.

EXCEPTION.—The bride and the bridegroom are not liable to punishment under this section.

5. Any man who having completed fifty years of age marries an infant girl shall be punished with imprisonment of either description for a term which may extend to four years or with fine which may extend to two thousand rupees, or with both.

Punishment for an old man marrying an infant girl.

6. Any person who causes the marriage of an infant girl with a man who has completed fifty years of age or who knowingly aids and abets within the meaning of the [1]Ranbir Dand Bidhi such a marriage, shall be punished with imprisonment of either description for a term which may extend to four years or with fine which may extend to two thousand rupees, or with both.

Punishment for causing marriage of an infant girl with an old man.

EXCEPTION.—The bride is not liable to punishment under this section.

[2]**7.** Omitted.

8. No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

Court competent to try offences under the Act.

[3][**9.** No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

Mode of taking cognizance of offences.

10. When the Court takes congnizance of any offence under this Act upon a complaint made to it, it may at any time after examining

Power to take security from complainant.

1. Ranbir Penal Code.
2. Section 7 omitted by Act II of 1992 which was to take effect from the date of enforcement of the infant Marriage Prevention Act No. I of 1985.
3. Sections 9, 10 and 11 inserted *vide* Act III of 2002.

the complainant and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1989 ; and if such security is not furnished within such time as the Court may fix. the complaint shall be dismissed.

Power to issue injunction prohibiting marriage in contravention of this Act.

11. (1) Notwithstanding anything to the contrary in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that an infant marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).

(4) Where such application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record its reasons for so doing.

(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section, disobeys such injunction, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to Rs. 1,000, or with both :

Provided that, no woman shall be punished with imprisonment.]

THE FOOD CONTROL ACT, 1986 (1929 A. D.)

Act No. I of 1986.

CONTENTS.

Preambie.

SECTION.

1. Title, extent and commencement.

SECTION.

2. Method of aquisition and distribution of grain.

SECTION.

3. *Wad* transactions not enforceable

4. Advances recoverable as arrears of land revenue.

5. Control of movements within the limits of Kashmir Province.

6. Export of *shali* rice or maize.

7. Declaration of stocks.

8. Powers to commandeer stocks of *shali* or rice.

SECTION.

9. Penalties.

10. Penalties under this Act.

10-A. Powers of Director to impose fine.

10-B. Powers of Director to demand security.

10-C. Orders of Director final.

10-D. Penalties.

11. Constitution of the Board.

12. Repeal of previous orders.

THE FOOD CONTROL ACT, 1986 (1929 A. D.)

Act No. I of 1986.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Minister-in-waiting's endorsement No.* 1052-C, *dated* 29*th April*, 1929. *Published in the Government Gazette dated* 27*th Baisakh* 1986].

WHEREAS it is expedient to consolidate and amend the law relating to food control in Kashmir Province ; It is hereby enacted as follows :—

Preamble.

1. (*a*) This Act may be called "The Food Control Act, 1986".

Title, extent and commencement.

(*b*) It extends to the whole of the Kashmir Province.

(*c*) It shall come into force on and from the date of its third publication in the Jammu and Kashmir Government Gazette.

2. The [1][Director, Kashmir Valley Food Control], under the control of the [2][Government], shall continue to make arrangements to purchase *shali* with the object of stabilising prices in the

Method of acquisition and distribution of grain.

1. Substituted for "Manager State Granaries" or "State Granaries" by Revenue Department Notification No 84 published in the Government Gazette dated 26th Magher 1987.

2. In section 2 "Government" substituted for "Minister-in charge" *vide* Act X of 1996.

interest of the producer and the consumer in the Kashmir Province. The rates at which *shali* shall be purchased by the [1][Director, Kashmir Valley Food Control], through Government agency or by such other agencies as may be employed by the [1][Director, Kashmir Valley Food Control], for this purpose, shall be in accordance with the rates [2][fixed by the Government with the advice of the Board constituted under the provisions of section 11 of this Act]. The distribution of *shali* so purchased shall be effected by the [1][Director, Kashmir Valley Food Control], who shall work directly under the guidance of the [3][Government] or such other officer by whom the Jammu and Kashmir Government may direct the activities of the [1][Kashmir Valley Food Control] to be controlled. The profits accruing to the [1][Kashmir Valley Food Control] after meeting expenditure incurred in connection with its authorised operations shall be devoted exclusively to the furtherance of the [4][Food Control] scheme in Kashmir, with the approval of [5][the Jammu and Kashmir Government.]

Wad transaction not enforceable.

3. No agreement to repay in the form of agricultural produce any loan advanced in the Kashmir Valley otherwise than by Government agency shall be enforceable.

Advances recoverable as arrears of land revenue.

[6][**4.** (1) Advances made by the Kashmir Valley Food Control Department on account of *shali*, wheat or maize in addition to such penalty (not exceeding Rs. 12 per *Khirwar* of grain recoverable in lieu of such advances) as may be determined from time to time by the Minister in-charge of the said Department by a general or special order, shall be recoverable as arrears of land revenue where failure to deliver grain necessitates such recoveries being made.

(2) Balances other than those referred to in sub-section (1) due to the Kashmir Valley Food Control Depart-

1. Substituted for "Manager State Granaries" or "State Granaries" by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar, 1987.

2. Substituted for the words " given in the annexure to this Regulation" *vide* Act IX of 1993.

3. In section 2 "Government" substituted for "Minister-in-charge" *vide* Act X of 1996.

4. Substituted for "Grain Control" by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar, 1987.

5. Substituted for "His Highness the Maharaja Bahadur" *vide* Act IX of 1993.

6. Section 4 substituted *vide* Act VI of 2007. (For earlier amendments see Notification No. 84 published in Government Gazette dated 26th Maghar, 1987 and Act IX of 1993).

ment in cash or kind as may be certified in writing by the Director of the said Department as such balances, shall be recovered as arrears of land revenue].

[1][5. After consulting the Advisory Board constituted under the provisions of section 11 of the Act, the Director, Kashmir Valley Food Control, may from time to time subject to the control of the [2][Government] by order published in the Jammu and Kashmir Government Gazette and in such other manner, if any, as might be prescribed by the [2][Government] prohibit, restrict or control the import into the Municipal limits of the Srinagar City or the transport within the Province of Kashmir of *shali* or rice (including any preparation thereof) by any person or persons without the authority or permission of the said Director.]

[3][6. *Shali*, rice, maize, or any preparation thereof shall not be exported from the Kashmir Province except with the previous permission in writing of the Director, Kashmir Valley Food Control.]

Export of *shali*, rice or maize.

7. (1) The [4][Deputy Commissioner of a District] or any officer authorised by him in this behalf may by notice in writing require any person to decalre within 24 hours of the service of the notice the total stock of any *shali* or rice in his possession or held on his behalf within the province of Kashmir and such person shall be bound to comply accordingly.

Declaration of stocks.

(2) A notice under sub-section (1) shall be deemed to have been served when it is served in the manner provided in the Code of Civil Procedure, 1977. for the service of summonses or when proclaimed by beat of drum or when posted in a conspicuous place in the locality or localities where the stocks are believed to be held.

(3) If any attempt is made or apprehended to remove any stock or stocks regarding which action under sub-section (1) has been authorised, the [4][Deputy Commissioner of a District] or any officer authorised by him in this

1. Section 5 substituted *vide* Act IV of 1995.
2. In section 5 "Government" substituted for "Minister-in-charge" *vide* Act X of 1996.
3. Section 6 substituted by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar, 1987.
4. Substituted *vide* Act III of 2008 for "Governor, Kashmir Province",

behalf may take all necessary steps to prevent such removal.

(4) If the notice issued under sub-section (1) is not complied with within the prescribed time or if there is reason to doubt the accuracy of any declaration made under this Act the [1][Deputy Commissioner of a District] or any officer authorised by him in this behalf may enter into and search any house, place, tent or vessel believed to contain stock regarding which the notice was issued and served. The provisions of the Code of Criminal Procedure, [2][1989], shall apply so far as possible to all searches and entries made under this Act.

Power to commandeer stocks of *shali* or rice.

8. (1) Any person or persons other than an authorised agent of the [3][Director, Kashmir Valley Food Control,] acquiring or holding *shali* or rice or any preparation thereof in excess of the quantity considered sufficient by the [1][Deputy Commissioner of a District] to meet all legitimate household requirements (which shall include the requirements of guests and dependents according to the position of such person) for a period of one year, at any time may be required by notice in writing served in the manner provided in section 7, sub-section (2) by the [1][Deputy Commissioner of a District] to hand over such surplus *shali* or rice or other preparation thereof to the [3][Director, Kashmir Valley Food Control] or his authorised agents [4][at the price sanctioned by the Government with the advice of the board constituted under the provisions of section 11 of the Act. Where *shali* or rice or any preparation thereof is commandeered at a place other than a recognized collection centre, the price to be paid shall be the price fixed for the nearest collection centre less nine pies per mile per *kharwar* for each mile of the distance from the nearest collection centre.]

(2) In the event of the person from whom *shali* or rice or other preparation thereof may be thus commandeered refusing to accept payment for the same at the rates [4][sanctioned by the Jammu and Kashmir Government with advice of the Board constituted under the provisions of this Act] or refusing to give a proper receipt for the payment so made, the price due

1. Substituted *vide* Act III of 2008 for " Governor Kashmir Province"
2. Substituted for "1969" *vide* Act IX of 1933.
3. Substituted for "Manager, State Granaries" by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar, 1981.
4. Substituted by Act IX of 1993 for certain words.

shall be deposited with the Tehsildar in whose Tehsil the *shali* or rice was lying at the time it was commandeered. On receipt of such deposit the Tehsildar concerned shall issue a notification through the Government Gazette to the effect that if the amount so deposited is not claimed within a period of six months after publication of the notification, the amount shall with the sanction of the [1][Deputy Commissioner of a District] and the concurrence of the [2][Director, Kashmir Valley Food Control,] be credited to Government and shall not be refundable unless the claimant can show cause to the [1][Deputy Commissioner of the District] for not having claimed the amount previously.

[3][(3) In calculating the price to be paid for rice commandeered under this Act, ten *naks* rice shall be taken as the equivalent of one *kharwar shali*. *Shali* commandeered within the Srinagar Municipal area shall be paid for at a rate which shall be rupee one below the rate at which the Kashmir Valley Food Control Department is authorised to sell *shali* on the date such grain was commandeered.]

Penalties.

9. Any person who makes a false declaration when called upon under section 7 of this Act to declare his stocks, shall be punishable with simple imprisonment for a period not exceeding one year or with fine not exceeding Rs. 1,000, or with both, and any *shali* and rice or other preparation thereof found in the possession of such a person or held on his behal shall be confiscated with the exception of such quantity as may be deemed by the Court to be sufficient to meet all legitimate household requirements of such person for one year.

10. Any person who disobeys any order issued under this Act [4][x x x] or endeavours to defeat its objects or contravenes any provision of this Act in any other way shall be punishable with simple imprisonment for a period not exceeding one year or with fine not exceeding Rs.1,000, or with both. All offences under this Act shall be triable by a Court not lower in rank than that of a Magistrate of the first class, and shall be cognizable by the Police and not compoundable except with the previous written sanction of the [1][Deputy Commissioner of the District.]

[5]**10-A.** The Director, Kashmir Valley Food Control, shall

1. Substituted *vide* Act III of 2003 for "Governor Kashmir, or Governor Kashmir Province".
2. See foot note 3 under section 8.
3. Sub-section (3) added *vide* Act IX of 1993.
4. Words "or excites or attempts to excite dissatisfaction against this Regulation" omitted by Act IV of 1995
5. Section 10-A added by Revenue Department Notification No. G-1128/335 dated 12th September, 1932, published in Government Gazette dated 7th Assuj, 1889.

at his discretion impose a fine not exceeding Rs. 50 on a *hanji* and not exceeding Rs. 10 on a *hamal* for any of the following irregularities committed by the *hanji* or *hamal* and he is authorised to recover or remit the fine imposed by him in any case :—

Irregularities.

(*a*) adulteration of grain ;
(*b*) misbehaviour of any kind resulting in a disturbance;
(*c*) misappropriation of grain belonging to the Department ;
(*d*) unauthorised sale of grain belonging to the Department ;
(*e*) direct dealing with *zamindars* and ticket-holders ;
(*f*) short weighments ;
(*g*) attempt to cheat *zamindars* who deal with the Department ;
(*h*) non-compliance with any legal order passed by the Director, Kashmir Valley Food Control.

[1]**10-B**. The Director, Kashmir Valley Food Control, may at his discretion demand cash security from *hanjis* and *hamals*, before or after they are employed by the Department, and may for reasons to be recorded in writing confiscate such security money or any portion thereof.

[1]**10-C**. The orders of fine and confiscation of security passed by the Director, Kashmir Valley Food Control, shall be final and shall not be open to any appeal or application for revision to any higher authority.

[2]**10-D**. Notwithstanding anything said in section 10 above, any *markban* or pony-man found guilty of any of the following irregularities with respect to *shali* committed to their charge by *zamindars* for delivery to the Kashmir Valley Food Control Department at appointed centres shall be punished on conviction by any Magistrate with a fine not exceeding Rs. 50 :—

Irregularities.

(*a*) adulteration of grain ;

1. Sections 10-B & 10 C added by Revenue Department Notification No. G. 1128/355 dated the 12th September, 1932, published in Government Gazette, dated the 7th Assuj, 1989.

2. Section 10-D added by Revenue Department Notification No. 440-G dated the 13th February, 1933, published in Government Gazette dated the 20th Phagan 1998.

(*b*) misbehaviour of any kind resulting in an affray ·
(*c*) misappropriation of grain belonging to a *zamindar* ;
(*d*) unauthorised disposal of grain belonging to a *zamindars* ;
(*e*) attempt to cheat a *zamindar* who entrusts him with *shali* for delivery at Kashmir Valley Food Control Department;
(*f*) attempt to cheat the staff of the Kashmir Valley Food Control Department responsible for accepting the delivery of *shali* from *zamindars*.

[1]**11.** There shall be constituted an Advisory Board to suggest to the Government from time to time a schedule of rates regarding the purchase and sale of *shali* at different *ghats*.

Constitution of the Board.

The Board shall consist of seven members. The Revenue Minister and the Director Food Control shall be *ex-officio* members of the Board. The remaining five shall be elected by the [2]Praja Sabha from amongst its non-official members belonging to Kashmir Valley. Three shall be from the rural area and two from the city of Srinagar.]

[1]**12.** All previous orders and Regulations passed in regard to the control of maize, *shali* and rice and preparation thereof in the Kashmir Province are hereby repealed.

Repeal of previous orders.

[3]ANNEXURE. Repealed.

THE JUVENILE SMOKING ACT, 1986 (1929 A. D.)

Act No. II of 1986.

CONTENTS.

Preamble.

SECTION.		SECTION.	
1.	Title, extent and commencement.	4.	Seizure of tobacco being consumed by juvenile in a public place.
2.	Definitions.	5.	Summary jurisdiction.
3.	Penalty on selling tobacco to youthful persons.		

---

1. Section 11 added *vide* Act IX of 1993. Old section 11 renumbered as section 12.
2. Legislative Assembly.
3. Annexure was repealed by Act IX of 1993.

THE JUVENILE SMOKING ACT, 1986 (1929 A. D.)

Act No. II of 1986.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Minister-in-Waiting's endorsement No.* 2050/*C, dated 4th July,* 1929. *Published in the Government Gazette dated 3rd Sawan,* 1986.]

An Act to provide for the prevention of smoking by Juveniles.

WHEREAS it is expedient to provide for the prevention of smoking by youthful persons in the Jammu and Kashmir State, His Highness the Maharaja Bahadur, is pleased to enact as follows :—

Preamble.

1. (1) This Act may be called "The Juvenile Smoking Act, 1986".

(2) It shall extend to the whole of the Jammu and Kashmir State.

(3) It shall come into force on and from the first day of Katik, 1986.

2: In this Act, unless there is something repugnant in the subject or context,—

Definitions.

"tobacco" shall mean tobacco cut or uncut and includes any preparation or mixture of tobacco with other substances for the purpose of smoking or chewing or taking in as snuff;

"public place" means any place to which the public for the time being has access whether on payment or otherwise and includes any conveyance plying for hire.

3. Whoever sells or gives or attempts to sell or give to a person actually and by appearance under the age of 16 years, except on the written order of the parent, guardian or employer of such person any tobacco, shall be liable, on conviction before a Magistrate, in the case of first conviction, to a fine not exceeding twenty rupees, and in the case of second conviction to a fine not exceeding fifty rupees, and in the case of third and every subsequent conviction to a fine not exceeding one hundred rupees.

Penalty on selling tobacco to youthful persons.

Seizure of tobacco being consumed by juvenile in a public place.

4. If any boy actually and by appearance under the age of 16 years be found smoking or chewing tobacco or taking it in as snuff, in any public place, it shall be lawful for any *lambardar*, *zaildar*, teacher of a recognized school or affiliated college, member of a Municipal committee, member of a Notified Area Committee, legal practitioner, medical practitioner or Magistrate to seize such tobacco and destory it.

Summary jurisdiction.

5. The High Court of Judicature, Jammu and Kashmir State, may confer on any Magistrate power to try summarily any offence under this Act.

THE PRIMARY EDUCATION ACT, 1986 (1930 A. D.)

Act No. III of 1986.

CONTENTS.

Preamble.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Duty of parent to send boy to school.
4. Reasonable excuse for non-attendance.
5. Penalty for neglect by parent.
5-A Summary Jurisdiction.
6. Unlawful employment of boy.
7. School Attendance Committee.
8. Warning by School Attendance Committee.
9. Limitation on prosecution.
10. Bye-laws.
11. Exemption of Classes and Communities.

THE PRIMARY EDUCATION ACT, 1986 (1930 A. D.)

Act No. III of 1986.

[*Sanctioned by His Highness the Maharaja Bahadur under endorsement No.* 937, *dated the* 16*th January*, 1930, *from the Minister-in-Waiting. Published in the Government Gazette dated* 18*th Magh*, 1986.]

An Act to make provision for the compulsory attendance of boys at primary schools.

Preamble.

Whereas it is expedient to make provision for the compulsory attendance of boys at primary schools ; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Primary Education Act, 1986.

(2) It shall apply in the first instance to the following towns only within the local limits and from the dates mentioned against each, *viz.*—

Names of towns.	Local Limits.	Commencement.
(*i*) Jammu ..	As notified under the Jammu and Kashmir Municipal Act 1970.	1st Baisakh 1987.
(*ii*) Srinagar ..	Do.	Do.
[1](*iii*) Sopore ..	Do.	Do
[1](*iv*) Mirpur ..	Do.	Do.
[1](*v*) Udhampur ...	Do.	Do.

(3) [2][The Government] may by notification extend this Act to any other town or local area specified in such notification.

(4) [2][The Government] may by notification direct that the provisions of this Act shall be read subject to such modifications as may be specified in such notification in their application to any specified town or other local area to which it applies or has been extended.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,-

(1) "parent" includes the guardian and every person who is liable to maintain or has the actual custody of any boy ;

(2) "recognised school for primary education" means a school or department of a school recognised by the Education Department of the Government, and imparting instruction in

1. Sopore, Mirpur and Udhampur are now Town Areas under the Town Area Act
2. In sections 1(3) and (4), 3 (2), 7, 10, and 11 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996.

the courses prescribed for primary schools by the Education Department of the Government.

Duty of parent to send boy to school.

3. (1) In every area to which this Act applies or has been extended, it shall be the duty of the parent of any boy residing within such area, who is not under six and not over eleven years of age, to cause such boy to attend a recognised school for Primary Education unless there be a reasonable excuse for his non-attendance within the meaning of section 4 :

Provided that, no boy who has completed the course prescribed for the fourth primary standard or a course notified by '[the Government] as equivalent to that standard shall be required to attend such recognised school.

(2) Where under this section it is the duty of the parent of any boy to cause him to attend a recognised school, ²[the Government] will prescribe the number of days in each month and the number of hours in each day during which each boy shall be required to attend; and a boy shall not be deemed to have attended school in the meaning of this section, unless he has attended on the days and during the hours so prescribed.

Reasonable excuse for non-attendance.

4. Any of the following shall be deemed to be a reasonable excuse for non-attendance :—

(*a*) that there is no recognised school for primary education within a distance of one mile by the nearest route from the residence of the boy ;

(*b*) that boy has been exempted by the School Attendance Committee on religious grounds ;

(*c*) that the boy is shown to the satisfaction of the School Attendance Committee to be receiving efficient instruction in some other manner ;

(*d*) that the boy has been granted temporary leave of absence from school for sickness or other sufficient reason in accordance with rules made under section 10 ;

(*e*) that the boy is shown to the satisfaction of the School Attendance Committee to be permanently unfit to attend school by reason of some bodily defect or infirmity.

Penalty for neglect by parent.

5. Any parent who shall neglect to comply with the provisions of section 3 shall on conviction by any Magistrate be punishable with a fine not exceeding five rupees.

1. Substituted *vide* Act VII of 2001 for „His Highness".
2. See footnote under section 1 (3).

[1][**5-A.** Notwithstanding anything contained in the Code of Criminal Procedure, 1989, the High Court may confer on any Magistrate powers to try offences under this Act summarily in accordance with the procedure laid down in sections 263, 264 and 265 of the said Code.]

Unlawful employment of boy.

6. Any person other than the parent of such boy who shall during the prescribed hours of attendance at school utilize in connection with any employment, whether for remuneration or not, the services of any boy whose parent is required under section 3 to cause his attendance at school, shall on conviction be punishable with a fine not exceeding twenty-five rupees.

School Attendance Committee.

7. For every town or local area to which this Act applies or has been extended, one or more School Attendance Committees shall be constituted in accordance with rules prescribed by [2][the Government].

Warning by School Attendance Committee.

8. Whenever the School Attendance Committee has reason to believe that the parent of any boy within its area is not causing the boy to attend school in accordance with section 3, or that any person is employing any boy in a manner which constitutes an offence under section 6, it shall warn him to cause the boy to attend school or to discontinue the employment of the boy, as the case may be, within one week after receipt of such warning.

Limitation on prosecution.

9. No Court shall take cognisance of any offence under section 5 or 6 except upon complaint by the School Attendance Committe and unless a warning under section 8 has been given and not complied with.

Bye-laws.

10. [2][The Government] may make rules—

(*a*) generally to carry out the objects of this Act, and

(*b*) in particular prescribing—

(*i*) the constitution, duties and powers of the School Attendance Committees,

1. Section 5-A inserted *vide* Act XVIII of 2003.
2. See footnote under section 1(3).

(*ii*) the conditions under which leave may be granted to boys under section 4 (d) and the authority competent to grant such leave.

Exemption of Classes and Communities.

11. [1][The Government] may by notification exempt particular persons, classes or communities from the operation of this Act.

THE JAMMU AND KASHMIR FOREST ACT, 1987 (1930 A. D.)
Act No. II of 1987.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Short title, commencement, extent and repeal of enactments.
2. Definitions.

CHAPTER II.

DEMARCATED FORESTS.

3. Demarcation of forests ; powers to demarcate forests.
4. Management and control of demarcated forests.
5. Power to regulate concessions in demarcated forests.
6. Acts prohibited in such forests.
7. Power to enforce punitive closures.
8. Power to inflict communal punishment.
9. Power to declare forest no longer demarcated.

SECTION.

CHAPTER III.

UNDEMARCATED FORESTS.

Mangement and control of undemarcated forests.
11. Power to issue notification.
12. Power to make rules for undemacrated forests.
13. Penalties for acts prohibited in undemarcated forests.
14. Nothing in this Chapter to prohibit acts done in certain cases.

CHAPTER III-A.

OF VILLAGE FORESTS.

14-A. Formation of village forests.

CHAPTER IV.

CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT.

15. Power to make rules to regulate transit of forest produce.

1. See footnote under section 1 (3).

SECTION.

16. Penatly for breach of rules made under section 15.

17. Government and Forest officer not responsible for damage to forest produce at depot.

18. All persons bound to aid in case of accident at depot.

CHAPTER V.

COLLECTION OF DRIFT AND STRANDED TIMBER.

19. Certain kinds of timber to be deemed property of Government until title thereto proved and may be collected accordingly.

20. Notice to claimants of drift timber.

21. Procedure on claim preferred to such timber; on rejection of claim to such timber claimant may institute suit.

22. Disposal of unclaimed timber.

23. Government and its officers not responsible for damage to such timber.

24. Payment to be made by claimant before timber is delivered to him.

25. Power to make rules and prescribe penalties.

CHAPTER VI.

PENALTIES AND PROCEDURE.

26. Seizure of property liable to confiscation; application for confiscation.

SECTION.

27. Procedure by Magistrate thereon.

28. Forest produce, tools, etc, when liable to confiscation.

29. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed.

30. Procedure when the offender is not known or cannot be found.

31. Procedure as to perishable property seized under section 26.

32. Appeal from orders under section 28, 29 or 30.

33. Property when to vest in State.

34. Saving of power to release property seized.

35. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

36. Power to arrest without warrant.

37. Power to prevent commission of offence.

38. Power to compound offences.

39. Presumption that the forest produce belongs to Government.

CHAPTER VII.

CATTLE TRESPASS.

40. Cattle trespass.

SECTION.

CHAPTER VIII.

FOREST OFFICERS.

41. Powers conferred under this Act.

42. Forest officers to be public servants; indemnity for act done in good faith.

43. Forest officers and Police officers liable to punishment for vexatious acts.

44. Forest officers not to trade.

CHAPTER IX.

SUBSIDIARY RULES.

45. Additional powers to make rules.

46. Penalties for breach of rules.

SECTION.

47. Rules when to have force of law.

CHAPTER X.

MISCELLANEOUS

48. Persons bound to assist Forest and Police officers.

49. Penalty for non-compliance.

50. Summary action by Deputy Commissioner in fire cases.

51. Appeal against order of Deputy Commissioner.

52. Recovery of money due.

53. Lien on forest produce for such money.

54. Power to sell such produce.

THE SCHEDULE.

THE JAMMU AND KASHMIR FOREST ACT, 1987 (1930 A. D.)

Act No. II of 1987.

[*Sanctioned by His Highness the Maharaja Bahadur under State Secretary's No.* 5806, *dated* 19*th October*, 1930. *Published in the Government Gazette dated* 10*th Assuj*, 1987.]

An Act to amend and consolidate the law relating to forests and the transit of forest produce.

Preamble.

WHEREAS it is expedient to amend and consolidate the law relating to forests and the transit of forest produce; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. (*1*) This Act may by called the Jammu and Kashmir Forest Act, 1987.

[1](*ii*) It shall come into force on such date as may be specified in this behalf by notification in the Jammu and Kashmir Government Gazette issued under authority of the Minister-in-charge of the Forest Department.

Commencement.

(*iii*) It shall extend to the whole of the State.

Extent.

(*iv*) On and from the date on which this Act comes into force, the Regulation, Orders of His Highness the Maharaja Bahadur conveyed in Chief Minister's communications and the State Council Resolutions mentioned in the Schedule hereto annexed shall be repealed, but, all notifications published, declarations and rules made, places appointed, acts done or validated, agreements filed, scales prescribed, forms framed, appointments made, and powers conferred under the said Regulation or any of the said Orders of His Highness the Maharaja Bahadur or the said State Council Resolutions and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been respectively published, made, appointed, done or validated, filed, prescribed, framed and conferred under this Act and by the authority empowered thereby in such behalf.

Repeal of enactment.

2. In this Act, unless there be something repugnant in the subject or context, --

Definitions.

[2]["Forest officer" includes the Chief Conservator, Conservators, Deputy and Assistant Conservators, Forest Rangers, Foresters, Forest Guards and any persons whom [3][the Government] or any officer empowered by [3][the Government] may from time to time appoint by name or as holding an office to carry out all or any of the purposes of the Forest Act, or to do anyting required by this Act or any rule made under this Act to be done by a Forest officer;]

"Forest officer."

"tree" includes palms, bamboos, stumps, brush-wood and canes ;

"tree"

"timber" includes trees and bamboos when they have fallen or have been felled, and all wood whether cut up or fashioned or hallowed out for any purpose or not ;

"timber.

1. Came into force from 1st Katik, 1987 (g. g. 1c-6-1987).
2. Definition of "Forest officer" substituted by R. D. Notification No. 51 published in Government Gazette dated 27th Magh, 1990.
3. Substituted for "His Highnees" *vide* Act X of 1996.

"forest produce". "forest produce" includes—

(*a*) the following, whether found in or brought from, a forest or not, that is to say :—

[1][timber, cautchus, catechu,] wood-oil, resin, natural varnish, bark, lac, mahus flowers and myrabolams, and

(*b*) the following when found in, or brought from, a forest, that is to say :—

(*i*) [2][x x x] charcoal, trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including *kuth*, grass, creepers, reeds and moss), and all parts of produce of such plants,

(*iii*) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts or produce of animals, and

(*iv*) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);

"forest offence". "forest offence" means an offence punishable under this Act, or under any rule made under this Act ;

"cattle". "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids ;

"demarcated forest." "demarcated forest" means forest land or waste land under the control of the Forest Department, of which the boundaries have already been demarcated by means of pillars of stone or masonry or by any other conspicuous mark, or, which may hereafter be constitued a demarcated forest under section 3;

"undemarcated forest." [3]["undermarcated forest" means and includes all forest land (other than demarcated forest) which is the property of the Government and is not appropriated for any specific purpose ;]

"river" "river" includes streams, canals, creaks, and other channels, natural or artificial excepting such *kuhls* and channels as are constructed and maintained by the *zamindars* at their own expense for pur-

1. Substituted *vide* Act VIII of 2006 for 'cautchus, catechu"
2. Word, "timber" deleted *vide* Act VIII of 2006.
3. Substituted *vide* Act XX! of 1998 for the existing clause.

poses of irrigation and in regard to which no settlement has been arrived at between the Forest and the Revenue Departments to bring them within this definition.

CHAPTER II.

DEMARCTAED FORESTS.

Demarcation of forests.

3. (1) [1][The Government] for purposes may from time to time make rules in accordance with which any forest land or waste land which is the property of Government or over which the Government has proprietary right, or to the whole or any part of the forest produce of which the Government is entitled, may be declared as demarcated forest and may from time to time as the occasion may require amend or cancel such rules :

Powers to demarcate forests.

Provided that, nothing in this section shall be deemed to apply to such Government waste land or forest *berun line* as is under the management and control of the Revenue Department.

(2) All rules made under sub-section (1) shall be published in the Jammu and Kashmir Government Gazette.

(3) The revised rules for the demarcation of forests sanctioned by His Highness the Maharaja Bahadur in the Chief Minister's No. 414, dated the 12th March, 1924, shall be deemed to have been made under sub-section (1).

(4) On the completion of the demarcation proceedings in accordance with the rules made under sub-section (1) the results of such proceedings for each such forest land or waste land shall be notified in the Jammu and Kashmir Government Gazette in accordance with such rules by the Conservator of the Circle and from the date of such publication such forest or waste land shall be deemed to be a demarcated forest.

Management and control of demarcated forests.

4. The management of the demarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority) is vested in the Forest Department.

1. In sections 3, 5, 6, 9, 10, 11, 12, 14, 15, 16, 19, 25, 34, 38, 45 and 47 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur" **Act X of 1996.**

The control and management of demarcated forests not in charge of the Forest Department shall be vested in such officer as the Government may, by notification, prescribe in this behalf and such officer may by like notification be invested with all or any of the powers and liabilities of a Forest officer under this Act.

Power to regulate concessions in demarcated forests.

5. [1][The Government] may from time to time make rules to regulate the exercise of concessions in demarcated forests and may prescribe the limits upto which closures to concessions may be permitted and the procedure to be adopted when closures are to be effected.

Acts prohibited in such forests.

6. Any person who—

(*a*) sets fire to a demarcated forest, or kindles any fires, or leaves any fire burning in such manner as to endanger such a forest ;

or who in a dematcated forest—

(*b*) kindles, keeps or carries any fire except at such seasons as the Conservator of the Circle may from time to time notify in this behalf ;

(*c*) causes any damage by negligence in felling any tree or cutting or dragging any timber ;

(*d*) fells, girdles, lops, taps, or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same ;

(*e*) quarries stone, burns lime or charcoal or collects, subject to any manufacturing process, or removes, any forest produce ;

(*f*) clears or breaks up any land [2][or erects a fence or enclosure] for cultivation or any other purpose ;

(*g*) in contravention of any rules which [1][the Government] may from time to time in the Jammu and Kashmir Government Gazette prescribe, hunts, shoots, fishes, poisons water or sets traps or snares ;

(*h*) in such forest or part thereof duly declared to be, closed by competent authority trespasses cattle or pastures cattle, or permits cattle to trespass ; or

(*i*) removes or damages the utensils, lips, nails or other articles, fixed to trees for the collection of resin;

shall be punished with imprisonment of either description for a term which may extend to one month or with fine not exceeding one hundred rupees, or with both, in addition to such

1. See footnote under section 3.
2. Words within brackets added *vide* Notification 24-L/1989, Act XIII of 1989.

compensation for damage done to the forest as the convicting Court may direct to be paid. Nothing in this section shall be deemed to prohibit –

(*a*) any act done by permission in writing of a Forest officer, or under any rule made by [1][the Government]; or

(*b*) the exercise of any right created by grant or contract in writing or concession, made by or on behalf of [1][the Government].

Power to enforce punitive closures.

7. Whenever, in a demarcated forest, fire is caused wilfully or by gross negligence, or trees are felled or killed repeatedly without permission, the Chief Conservator may (notwithstanding that any penalty has been inflicted under section 6) direct that in such forest or any portion thereof the exercise of all or any rights or concessions or privileges of pasture or to forest produce shall be suspended for a period not exceeding two years :

Provided that, the order of the Chief Conservator, in so far as it concerns the restriction of any right, concession or privilege other than the removal of fallen timber, shall be subject to the previous approval of the [2][Government]:

Provided also that, the cutting of grass and the collection of fuels hall not be suspended without the approval of the [2][Government].

Power to inflict communal punishment.

8. Whenever, during the period of suspension of any rights, concessions or privileges, under the last preceding section, fire or damage to trees is proved to have been caused wilfully and persistently in any demarcated forest, the Chief Conservator shall have a written warning served through the *zaildar* and *lambardars* on all or any of the villages enjoying rights, concessions or privileges in such forest. Should such warning remain unheeded, the Chief Conservator may, with the concurrence of the Commissinor of the Province, inflict a collective fine on such village or villages, limited in amount to one year's land revenue of the village or villages concerned, provided that in the case of disagreement between the Commissinor and the Chief Conservator of Forests the fine shall be subject to confirmation by the [3][Government].

1. See footnote under scet'ion 3.

2. In section 7 word "Government" substituted at two places for some words *vide* Act X of 1996.

3. In section 8 "Government" substituted for " Revenue Minister His Highness, Government" *vide* Act X of 1996.

Any fines imposed under this section shall be recoverable as arrears of land revenue.

Power to declare forest no longer demarcated.

9. [1][The Government] may by notification in the Jammu and Kashmir Government Gazette declare that from a date fixed by such notification any demarcated forest or any portion thereof shall cease to be a demarcated forest, and from the date so fixed, such forest or a portion shall cease to be demarcated.

CHAPTER III.

UNDEMARCATED FORESTS.

Management and control of undemarcated forests.

10. The management of the undemarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority) is vested in the Forest Department.

The control and management of undemarcated forests not in charge of the Forest Department shall be vested in such officer as [1][the Government] may, by notification in the Jammu and Kashmir Government Gazette, prescribe in this behalf and such officer may by like notification be invested with all or any of the powers and liabilities of a Forest officer under this Act.

Power to issue notification.

11. [1][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette—

(*a*) declare any class of trees in an undemarcated forest or any trees in any such forest, to be reserved from a date fixed by such notification ;

(*b*) prohibit, from a date fixed as aforesaid the quarrying of stone, or the burning lime or charcoal, or the collection or subjection to any manufacturing process, or, removal of any forest produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose, any land in any such forest ; and

(*c*) alter or cancel such delcaration or prohibition.

Power to make rules for undemarcated forests.

12. [1][The Government] may from time to time make rules to regulate the following matters:—

(*a*) the sale and removal of trees and forest produce from

1. See footnote under section 3.

the undemarcated forests;

(*b*) the protection and managment of the undemarcated forests ; and

(*c*) the exercise of concessions in undemarcated forests.

Penalties for acts prohibited in undemarcated forests.

13. Any person who commits any of the following offences :—

(*a*) fells, girdles, lops, taps or burns any tree reserved under section 11, or strips off the bark or leaves from, or otherwise damages, any such tree ;

(*b*) contrary to any prohibition under section 11 quarries any stone, burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest produce ;

(*c*) contrary to any prohibition under section 11 breaks up or clears for cultivation or any other purpose any land in any undemarcated forest ;

(*d*) sets fire to such forest or kindles any fires, or leaves any fire burning in such a manner as to endanger such forest ;

(*e*) removes or damages the utensils, lips, nails or other articles fixed to trees for the collection of resin ; and

(*f*)infringes any rules made under section 12 ;

shall be punished with imprisonment of either description for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this chapter to prohibit acts done in certain cases.

14. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest officer, or in accordance with any rule made by [1][the Government], or in the exercise of any right created by grant or contract, or concession made by or on behalf of [1][the Government].

---

[2][CHAPTER III-A.

OF VILLAGE FORESTS.

Formation of village forests.

14-A. [3][The Government] may from time to time assign to any village community the rights of Government to or over any land which

1. See footnote under section 3.
2. Chapter III-A, section 14-A added by Revenue Department Notification No. 54, dated 13th March, 1934.
3. Substituted *vide* Act X of 2010 for "His Higlness the Maharaja Bahadur".

has been entered in Settlement records as *Khalsa* land and may cancel such assignment. All lands so assigned and to be turned into forests shall be called village forests.

[1][The Government] may from time to time make rules for the regulating management of village forests prescribing the conditions under which the village community to which any such assignment is made may be provided with timber or other forest produce or pasture and their duties for the protection and improvements of such forests.

All provisions of this Act relating to demarcated forests shall (so far as they are consistent with the rules so made) apply to village forests.]

CHAPTER IV.

CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest produce.

15. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water is vested in [2][the Government] who may from time to time make rules to regulate the transit of all timber and other forest produce. Such rules may (among other matters):—

(*a*) prescribe the route by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;

(*b*) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass ;

(*c*) provide for the issue, production and return of such passes and for the payment of fees therefor ;

(*d*) provide for the stoppage, reporting examination and marking of timber or other forest produce in transit in respect of which there is reason to believe that any money is payable to State on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon or to which it is desirable for the purposes of this Act to affix a mark ;

1. See footnote under section 14-A.
2. See footnote under section 3.

(*e*) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it ; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots ;

(*f*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brush-wood, branches and leaves into any such river, or any act which may cause such river to be closed or obstructed ;

(*g*) provide for the prevention and removal of any obstruction of the channel or banks of any such river and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(*h*) prohibit absolutely or subject to conditions within specified local limits the establishment of saw-pits, the converting, cutting, burning, concealing of marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber ;

(*i*) regulate the use of property-marks for timber and the registration of such marks, prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

[1][The Government] may direct thar any rule made under this section shall not apply to any specified class of timber or other forest produce of any specified local area.

Penalty for breach of rules made under section 15.

16. [1][The Government] may, by such rules as are made under section 15, prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Government and Forest officer not responsible for damage to forest produce at depot.

17. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under section 15, or while detained elsewhere for the pur-

1. See footnote under section 3.

poses of this Act and no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

All persons bound to aid in case of accident at depot.

18. In case of any accident or emergency involving danger to any property, at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest officer or public officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER V.

COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved and may be collected accordingly.

19. (*a*) All timber found adrift, beached, stranded or sunk,

(*b*) all wood or timber bearing marks which have not been registered under section 15, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and

(*c*) in such areas as [1][the Government] may direct all unmarked wood and timber,

shall be deemed to be the property of Government unless and until any person establishes his right and title thereto as provided in this Chapter.

Such timber may be collected by any Forest officer or other person entitled to collect the same by virtue of any rule made under section 25 and may be brought to such depots as the Forest officer may from time to time notify as depots for the reception of drift timber.

[1][The Government] may, by notification in the Jammu and Kashmir Government Gazette, exempt any class of timber from the provisions of this section.

Notice to claimants of drift timber.

20. Public notice shall from time to time be given, by the Forest officer, of timber collected under section 19. Such notice shall contain a description of the timber, and

1. See footnote under section 3.

shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

21. When any such statement is presented as aforesaid, the Forest officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reason for so doing, or deliver the timber to claimant.

If such timber is claimed by more than one person, the Forest officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section, may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall recover any compensation or costs against the Government or against any Forest officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any civil, criminal, or revenue Court until it has been delivered or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

22. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 20 or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 21, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 21 in such other person, free from all incumberances not created by him.

Government and its officers not responsible for damage to such timber.

23. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 19, and no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage

negligently, maliciously or fraudulently,

Payment to be made by claimant before timber is delivered to him.

24. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest officer or other person entitled to receive it, such sum on account thereof as may be due under any rule made in pursuance of section 25.

Power to make rules and prescribe penalties.

25. [1][The Government] may from time to time make rules to regulate the following matters, namely: —

(*a*) the salving, collection and disposal of all timber mentioned in section 19;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

[1][The Government] may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to 6 months, or fine which may extend to five hundred rupees, or both.

CHAPTER VI.

PENALTIES AND PROCEDURE

Seizure of property liable to confiscation.

26 When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts, and cattle used in committing any such offence, may be seized by any Forest officer or Police officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

1. See footnote under section 3.

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

27. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest produce, tools, etc., when liable to confiscation.

28. All timber or forest produce which is not the property of the Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest offence shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest offence of produce in respect of which it was committed.

29. When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of the Government or has been confiscated, be taken charge of by a Forest officer, and in any other case may be disposed of in such manner as the Court may direct.

Procedure when the offender is not known or cannot be found.

30. When the offender is not known or cannot be found the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that, no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure as to perishable property seized under section 26.

31. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 26 and subject to speedy and natural decay, and may

deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under section 28, 29 or 30.

32. The officer who made the seizure under section 26 or any of his official superiors or any person claiming to be interested in the property so seized, may, within the period ordinarily allowed for appeals from the orders of such Magistrate, appeal from any orders passed under section 28, 29 or 30 to the Court to which, orders made by such Magistrate are ordinarily appealable; and the order passed on such appeal shall or shall not be final according to law relating to criminal procedure for the time being in force in the State.

Property when to vest in State.

33 When an order for the confiscation of any property has been passed under section 28 or 30 as the case may be, and the period limited by section 32 for an appeal from such order has elapsed and no such appeal has been preferred, or when on such an appeal being preferred the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

34. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by [1][the Government] from directing at any time the immediate release of any property seized under section 28.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

35. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the [2]Ranbir Dand Bidhi:—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest officer to indicate that such timber or tree is the property of Government, or of some person or that it may lawfully be cut or removed by some person ; or

(*b*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest officer ; or

(*c*) alters, moves, destroys, or defaces, any boundary mark of any forest or waste land to which the provisions of

1. See foonote under secion.
2. Ranbir Penal Code.

this Act are applicable ;
shall be punished with imprisonment of either description for a term which may extend to 6 months, or with fine not exceeding five hundred rupees, or with both.

Power to arrest without warrant.

36. Any Forest officer or Police officer may without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment.

Every officer making an arrest under this section shall without unnecessary delay take or sent the person arrested before the Magistrate having jurisidction in the case, or to the officer in charge of the nearest police-station.

Power to prevent commission of offence.

37. Every Forest officer and Police officer shall prevent and may interfere for the purpose of preventing the commission of any forest offence.

Power to compound offences.

38. (1) [1][The Government] may from time to time by notification in the Jammu and Kashmir Government Gazette, empower a Forest officer by name, or as holding an offic—

(*a*) to accept from any person against whom a reasonable spsicion exists, that he has committed any forest offence other than an offence specified in section 35 or section 43 a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value or both, as the case may be, to such officer, the suspected person if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A forest officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and the sum of money accepted as compensation under sub-section (1) clause (*a*) shall in no case exceed

1. See footnote under section 3.

the sum of fifty rupees and where the case is compounded by a forest officer of the rank of Ranger, shall in no case exceed the sum of twenty five rupees.

Presumption that the Forest produce belongs to Government.

39. When in any proceedings taken under this Act or in consequence of anything done under this Act a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER VII.

CATTLE TRESPASS.

Cattle Trespass.

40. Cattle trespassing in any portion of a demarcated forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section section 11 of the Cattle Trespass Act, 1977, and may be seized and impounded as such by any Forest or Police officer.

CHAPTER VIII.

FOREST OFFICERS.

Powers conferred under this Act.

41. The following powers are conferred upon the Chief Conservator, Conservators and officers in charge of Forest Divisions:—

(*a*) the powers of a civil Court to compel the attendance of witnesses and the production of documents in cases relating to forest offence;

(*b*) the power to hold an equiry into forest offences and in the course of such enquiry to receive and record evidence. Any evidence so recorded shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest officers to be publice servants.

42. All Forest officers shall be deemed to be public servants within the meaning of the [1]Ranbir Dand Bidhi.

1. Ranbir Penal Code.

Indemnity for act done in good faith.

No suit shall lie against any public servant for anything done by him in good faith under this Act.

43. Any Forest officer or Police officer who vexatiously and unnecessarily arrests any person or detains any person when arrested or seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

Forest officers not to trade.

44. Except with the permission in writing of the Minister-in-charge of the Forest Department, [1][x x x x x x] no Forest officer shall, as principal or agent, trade in timber or other forest produce or be or become interested in any lease of any forest or in any contract for working any forest whether in the State or in foreign territory.

CHAPTER IX.

SUBSIDIARY RULES.

Additional powers to make rules.

45. [2][The Government] may from time to time make rules—

(*a*) to prescribe and limit the powers and duties of any officer under this Act;

(*b*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(*c*) for the preservation, reproduction and disposal of trees and timber belonging to Government but grown on lands belonging to or in the occupation of private persons; and

(*d*) generally, to carry out the provisions of this Act.

Penalties for breach of rules.

46. Any person breaking any rule under this Act for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to one hundred rupees, or both.

1. Words "His Highness' Government, Jammu and Kashmir" omitted *vide* Act X of 2010.

2. See footnote under section 3.

47. All rules made by [1][the Government] under this Act shall be published in the Jammu and Kashmir Government Gazette and shall thereupon so far as they are consistent with this Act have the force of law.

Rules when to have force of law.

CHAPTER X.

MISCELLANEOUS.

48. Every person who exercises any right or enjoys any concession or privilege in a demarcated or undemarcated forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in such forest, and

every person who is empolyed by any such person in such forest [2][or within five miles of its boundary, and]

every person in any village [2][within five miles radius of such forest] who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delayto the nearest Forest officer or Police officer any information he may possess respecting the commission of, or intention to commit, any forest officer, and shall assist any Forest officer or Police officer—

Persons bound to assist Forest and Police officers.

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire, which may occur in the vicinity of such forest from spreading to such forest; and shall assist any Forest officer or Police officer demanding his aid;

(*c*) in preventing the commission in such forests of any forest offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

49. Any person who wilfully neglects to give information or to render assistance, which he is bound to give or render under section 48 shall be liable, on conviction by a Magistrate of the 1st class to fine not exceeding Rs. 100 or in default of payment of such fine to simple imprisonment for a term not exceeding six months.

Penalties for non-compliance.

1. See footnote under section 3.
2. Inserted by R. D. Notification No. 21 dated 18th May, 1933 published in Government Gazette dated 19th Jeth, 1990.

Summary action by Deputy Commissioner in fire cases.

50. If in any case under clauses (*a*) and (*b*) of section 48 it appears to the [1][Deputy Commissioner] of the district within which the forest concerned is situated after local enquiry made in a summary and administrative manner, either by himself, or through a Tehsildar deputed by him for the purpose, that any such person or village or other community has neglected to give such information or to render such assistance as is required thereby, he may impose a fine not exceeding Rs. 100 on, as well as direct payment of compensation for damage to Government property by, such person, village or other community or such individual member of such village or other community as may be determined in consultation with the Divisional Forest Officer.

All fines imposed under this section shall be recoverable as arrears of land revenue.

Appeal against order of Deputy Commissioner.

51. An appeal against every order passed under section 50 may be made to the Commissioner whose decision shall be final.

Recovery of money due.

52. All money payable to the Government under this Act or under any rule made under this Act or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue.

Lien on forest produce for such money.

53. When any such money is payable for or in respect of any produce, the amount thereof shall be deemed to be a first charge on such produce and such produce may be taken possession of by a Forest officer until such amount has been paid.

Power to sell such produce.

54. If such amount is not paid when due, the Forest officer, in charge of the Division may sell such produce by public auction and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any) if not claimed within six months from the date of the sale by the person entitled thereto shall be forfeited to Government.

---

1. Substituted *vide* Act X of 2010 for "Wazir Wazarat"

SCHEDULE.

[SEE SECTION (IV)].

Enactments repealed.

No. and year of Regulation or Resolutions.	Title.	Extent of repeal.
Forest Regulation of 1970 ..	A Regulation to provide for the preservation and management of demarcated, partially demarcated or undemarcated forests in the Jammu and Kahmir State.	The whole.
Chief Ministers No. 547/H. 27/98, dated 17th May, 1914.	Amendment to Forest Regulation of 1970 ..	,,
,, ,, No. 6548, dated 12th January, 1916 ..	,, ,, ,, ,, ..	,,
,, ,, No. 12439, dated 18th March, 1919 ..	,, ,, ,, ,, ...	,,
,, ,, No. 6431/F.M, dated 17th August, 1920 .. 133/1918	,, ,, ,, ,, ..	,,
,, ,, No. 5972/C. XII-8, dated 10th August, 1921	,, ,, ,, ,, ..	,,
State Council Resolution No. CLXIII, dated 30th June, 1942	,, ,, ,, ,, ..	,,

THE JAMMU AND KASAMIR FOREST (SALE OF TIMBER) ACT, 1987 (1931 A. D.)

Act No. III of 1987.

CONTENTS.

SECTION.		SECTION.	
1.	Short title, extent and commencement.	4.	Application of Chapter VI of Jammu and Kashmir Forest Act No. II of 1987.
2.	Meaning of terms.	5.	Indemnity for acts done in good faith.
3.	Power to make rules regulating sale of timber and establishment of sale depots.		

THE JAMMU AND KASHMIR FOREST (SALE OF TIMBER) ACT, 1987 (1931 A. D.)

Act No. III of 1987.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Cabinet Secretary's endorsement No.* 2966, *dated the* 25*th February*, 1931. *Published in the Government Gazette dated* 29*th Phagan*, 1987.]

An Act to provide for the control of the sale of timber and the establishment of sale depots for such timber in the Jammu and Kashmir State.

WHEREAS it is expedient to provide for the control of the sale of timber and establishment of sale depots for such timber in the Jammu and Kashmir State; It is hereby enacted as follows : –

Short title, extent and commencement.

1. This Act may be called the Jammu and Kashmir Forest (Sale of Timber) Act No. III of 1987.

It shall extend to such local areas as the Jammu and Kashmir Government may by notification in the Jammu and Kashmir Government Gazette direct and it shall come into force in each of such areas on such day as the Jammu and Kashmir Government in like manner direct in this behalf.

Meaning of terms.

2. In this Act all expressions shall have the meaning assigned to them in the Jammu and Kashmir Forest Act No. II of 1987.

Power to make rules regulating sale of timber and the establishment of sale depots.

3. (1) The Jammu and Kashmir Government may by notification in the Jammu and Kashmir Government Gazette, make rules to regulate the sale of timber and the establishment of sale depots for such timber.

Such rules may among other matters—

(*a*) prescribe the classes of timber to which the rules shall apply ;

(*b*) define what shall be deemed to be a sale depot ;

(*c*) provide for the establishment, registration, regulation and inspection of sale depots, and the levy of fees for registration ; prescribe the period for which registration shall hold good and the conditions under which timber may be brought to, stored at, sold at, and removed from, sale depots and prohibit the sale of timber at or the establishment or maintenance of unregistered sale depots ;

(*d*) regulate the use of sale depot marks and the registration of such marks; prescribe the time for which registration shall hold good; and provide for the levy of fees for registration ;

(*e*) prescribe the registers to be maintained at sale depots, and provide for the production of such registers before and for their examination by any Forest or Police officer authorised in this behalf by the Divisional Fotest Officer or by the District Superintendent of Police, respectively ;

(*f*) prescribe as penalties for the infringement of any rule made under this section, imprisonment which may extend to six months or fine which may extend to Rs. 500 or both. Double penalties may be inflicted where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

(2) All rules made under sub-section (1) shall be so made after previous publication in the Jammu and Kashmir Government Gazette.

Application of Chapter VI of Jammu and Kashmir Forest Act.

4. The provisions of Chapter VI of the Jammu and Kashmir Forest Act No. 2 of 1987 with the exception of section 38, shall apply so far as may be to any infringement of the rules made under this Act as if such infringement were a forest offence under the Jammu and Kashmir Forest Act.

Indemnity for acts done in good faith.

5. No suit shall lie against any public servant for anything done by him in good faith under this Act.

THE SPECIAL PROCEDURE NOTIFICATION FOR CERTAIN OFFENCES.

Notification No. 13-L of 23rd June 1931.

[*Sanctioned by His Highness the Maharaja Bahadur on 23rd June*, 1931 *and published in Government Gazette dated* 18*th Har*, 1988.]

WHEREAS it is desirable that offences relating to sedition and those against regulations for the conduct of public meetings and those connected with the public peace should be tried expeditiously; It is hereby commanded as follows :—

1. Any offences [1][under sections 124-A & 153-A of the Ranbir Penal Code] [2][x x x] shall be triable by the Sessions

1. Substituted *vide* L. D. Notification No. 3-L/2003 published in the Government Gazette dated 5th Bhadon 2003 (Ext) for certain words etc. with retrospective effect from the date Act X of 1995 was sanctioned. (See also footnote 2).
2. Words etc. " the Jammu and Kashmir State Criminal Law Amendment Regulation 1971, Regulation for the Prevention of Seditious Meetings, 1971 and Notifications No. 2-L and 3-L of 19th July, 1927 (procedure prescribed in these Regulations and Notifications notwithstanding)" deleted from section 1 *vide* Act. No. X of 1995 published in the Government Gazette dated 21st Bhadon 1995 (Ext).

Judge [1][without commitment] and by no other Court inferior to the Court of the Sessions Judge, without the aid of jury or assessors, [2][in accordance with the procedure laid down in Chapter XXI of the Code of Criminal Procedure for the trial of warrant cases].

2. From any order of conviction or acquittal passed by the Sessions Judge in any prosecution in accordance with this Notification, there shall be permitted one appeal to the High Court which shall be heard by a Bench of two or more Judges, and the Judgment of the Special Bench of the High Court shall be final, subject to section 23 (a) of Order No. 1 of 26th March, 1928 constituting the High Court of Judicature, Jammu and Kashmir State.

3. The procedure prescribed in this Notificaton shall have retrospective effect also for the trial of offences described in section 1 committed on and after 1st May, 1931.

4. If during a trial, in accordance with the procedure prescribed in this Notification, the Sessions Judge or Bench of the High Court is of opinion that the trial should be held in camera and the admission of the public prohibited, the Judge, with the previous permission of the Chief Justice, or the Bench may pass an order prohibiting the public from entrance in the Court room and notifying the particular persons besides the accused, who would be permitted to be present during the trial.

——

THE LEGAL PRACTITIONERS (FEES) ACT, 1988 (1931 A.D.)

Act No. VII of 1988.

CONTENTS.

Preamble

SECTION.		SECTION.	
1.	Short title, extent and commencement.	3.	Agreement for engagement of legal practitioners.
2.	Interpretation.	4.	Right of legal practitioner to sue for fees.

1. Words " without commitment" added *vide* Notification No. 11-L/1988 published in the Government Gazette dated 25th Har, 1988.
2. Added *vide* L. D. Notification No. 3-L/2003 published in the Government Gazette dated 5th Bhadon 2003 (Ext) with retrospective effect from the date Act XI of 1995 was sanctioned.

SECTION. SECTION.

5. Liability of legal practitioner to be sued. 6. Repeal.

THE LEGAL PRACTITIONERS (FEES) ACT, 1988 (1931 A. D.)

Act No. VII of 1988.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Notification No.* 8-*L*/88, *dated* 15*th June*, 1931/1*st Har*, 1988. *Published in the Government Gazette dated* 18*th Har*, 1988.

An Act to define in certain cases the right of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties.

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Legal Practitioners (Fees) Act, 1988.

(2) It extends to the whole of Jammu and Kashmir State.

(3) It shall come into force on such date as [1][the Government] may, by notification in the Jammu and Kashmir Government Gazette, appoint.

Interpretation.

2. For the purpose of this Act, unless there is anything repugnant in the subject or contexts—

(*a*) "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1977 ; and

(*b*) a legal practitioner shall not be deemed to "act" if he only pleads, or to "agree to act" if he agrees only to plead.

1. Substituted for "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

3. Any legal practitioner, who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional service.

Agreement of engagement of legal practitioner.

4 Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

Right of legal practitioner to sue for fees.

5. No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

Liability of legal practitioner to be sued.

6. Sections 28 to 31 of the Legal Practitioners Act, 1977, are hereby repealed.

Repeal.

THE JAMMU AND KASHMIR STATE PRESS AND PUBLICATIONS ACT, 1989 (1932 A. D.)

Act No. 1 of 1989.

CONTENTS.

SECTION.

1. Short title and extent.
2. Definitions.
3. Particulars to be printed on books and papers.
4. Sanction for keeping printing press.
5. Sanction for newspapers.
5-A. Interpretation.
6. Authentication of declaration. Deposit. Inspection and supply of copies.

SECTION.

7. Attested copy of declaration to be *prima facie* evidence.
8. Declaration by persons who have ceased to be editors, printers or publishers.
8-A. Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.
9. Deposit of security by keepers of printing presses.

SECTION.

10. Power to declare security or press forfeited in certain cases.

11. Deposit of further security.

12 Power to declare further security and publications forfeited

13. Issue of search-warrant.

14. Deposit of security by publisher of newspaper.

15. Power to declare security forfeited in certain cases.

16. Deposit of further security.

17. Power to declare further security and newspapers forfeited.

18. Power to declare certain publications forfeited and to issue search-warrants for same.

19. Power to detain packages containing certain publications when imported into the State.

20. Consequences of failure to deposit security required.

Powers af High Courts.

21. Application to High Court to set aside order of forfeiture.

22. Hearing by Special Bench.

23. Order of Special Bench setting aside forfeiture.

24. Evidence to prove nature or tendency of newspapers.

25. Procedure in High Court.

26 Delivery of books and newspapers.

Penalties.

27. Penalty for printing contrary to rule in section 3.

SECTION.

28. Penalty for keeping press without making declaration required by section 4.

29. Pusnishment for making false tatement.

30. Penalty for editing, printing or publishing periodicals without conforming to rules.

31. Penalty for non-delivery of books.

32. Penalty for failure to supply copies of newspapers *gratis* to Government.

33 Penalty for keeping press or publishing newspapers without making deposit.

34. Jurisdiction barred.

35. Return of securities.

36 Serving of notices

37. Conduct of searches.

Unauthorised news-sheets and news-papers.

38. Authorisation of persons to publish news-sheets.

39 Pow r to seize and destroy unauthorised news-sheets and newspapers.

40. Power to seize and forfeit undeclared presses producing unauthorised news-sheets and newspapers.

41. Penalty for disseminating unauthorised news-sheets and newspapers.

42. Operation of other laws not barred.

43. Power to make rules.

44. Repeal.

THE JAMMU AND KASHMIR STATE PRESS AND PUBLICATIONS ACT, 1989 (1932 A. D.)

Act No. I of 1989.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Notification No.* 1-*L*/1989 *dated* 25*th April*, 1932. *Published in the Government Gazette dated* 17*th Baisakh*, 1989.]

WHEREAS it is expedient to amend the law relating to the press and publications; It is hereby commanded as follows:—

1. (1) This Act may be called the Jammu and Kashmir State Press and Publications Act of 1989.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) "book" includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

(*b*) "document" includes also any painting, drawing or photograph or other visible representation:

[1][(*c*) "Magistrate" means a District Magistrate:]

(*d*) "newspaper" means any periodical work containing public news or comments on public news:

(*e*) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing:

[2](*f*)" Omitted:

(*g*) "editor" means the person who controls the selection of the matter that is published in a newspaper:

(*h*) "news-sheet" means any document other than a newspaper containing public news or comments on public news or any matter described in sub-section (1) of section 10:

(*i*) "press" includes a printing press and all machines, implements and plant and parts thereof and all materials used for multiplying documents:

(*j*) "unauthorised newspaper" means (a) any newspaper in respect of which there are not for the time being valid

1. Clause (*c*) substituted *vide* Act VII of 2008.
2. Clause (*f*) omitted *vide* Act X of 2010.

declarations under section 5 of this Act; and (b) any newspaper in respect of which security has been required under this Act but has not been furnished:

(*k*) "unauthorised news-sheet" means any news-sheet other than a news-sheet published by a person authorised under section 38 of this Act to publish it:

(*l*) "undeclared press" means any press other than a press in respect of which there is for the time being a valid declaration under section 4 of this Act:

(*m*) "State-Subject" means for the purposes of this Act every person who, at the time being, resides permanently within the State and has resided there for the previous twenty years:

[1](*n*) Repealed.

(2) Save as herein otherwise provided, all words and expressions in this Act shall have the same meaning as those respectively assigned to them in the Jammu and Kashmir State [2]Code of Criminal Procedure of Samvat 1969.

Particulars to be printed on books and papers

3. Every book or paper printed within the Jammu and Kashmir State shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher, and the place of publication.

Sanction for keeping Printing Press.

4. [3][(1)] No person shall, within the Jammu and Kashmir State keep in his possession any press for the printing of books or papers, who is not a State Subject as defined above, and who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

"I, A, B., declare that I have a press for printing at... ....."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

[3][(2) As often as a press for the printing of books and papers having ceased to function is restarted, a new declaration shall be necessary unless the cessation is due to non-compliance with an order under sub-section (3) of section 9 or sub-section (1) of section 11 or any other law for the time being in force.

(3) For the purposes of this Act, a printing press shall

1. Definition of "Minister of State" deleted *vide* Act X of 1996.
2. Code of Criminal Procedure (Act XXIII of 1989.)
3. Original section 4 numbered as sub-section (1) and sub-sections (2) and (3) added *vide* Act XXII of 2003.

be deemed to have ceased to function if no books or papers are printed therein for a period of six consecutive months.]

Sanction for newspapers.

5. No newspaper shall be [1][edited, printed or published] in the Jammu and Kashmir State by any one who is not a State Subject as defined above, and except in conformity with the provisions herein laid down:

(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper:

[2][(2) Every person who intends to edit, print or publish such newspaper shall appear before the Magistrate within whose local jurisdiction such newspaper is intended to be edited, printed or published and shall make and subscribe in duplicate the following declaration :—

"I, A. B., declare that I am the editor or/and printer or/and publisher of the newspaper entitled..... to be edited, or/and printed or/and published, as the case may be, at....."]:

[3][(2-A) As often as a newspaper having ceased to be printed or published is re-started, a new declaration shall be necessary unless the cessation is due to non-compliance with an order under sub-section (3) of section 14 or sub-section (1) of section 16 or any other law for the time being in force]:

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(4) As often as [4][the editor, printer or publisher] who shall have made such declaration as is aforesaid shall cease to reside in the Jammu and Kashmir State, a new declaration from [5][the editor, printer or publisher] resident within the State territories and who satisfies the conditions given above shall be necessary, provided that no person who has not attained majority in accordance with the provisions of the Majority Act No. XXVI of 1977 shall be permitted to make the declaration prescribed by this section. [6][x x x x].

[7][**5-A.** For the purposes of this Act, a newspaper shall be deemed to have ceased to be printed or published

1. Substituted *vide* Act XXII of 2003 for "printed or published".
2. Clause (2) of section 5 substituted *vide ibid*.
3. Clause (2-A) added *vide ibid*.
4. Substituted *vide ibid* for "the publisher or the printer".
5. Substituted *vide ibid* for "a printer or publisher".
6. Certain words omitted *vide* Act XXII of 2003.
7. Section 5-A resubstituted *vide* Act VII of 2008. (Originally section 5-A was inserted by Act XXII of 2003.)

if such newspaper—

(i) being a daily newspaper, prints and publishes less than 24 separate issues in one calendar month, each issue comprising a minimum volume of 4 pages and containing minimum printed space of 680 square inches;

(ii) being a bi-weekly newspaper, prints and publishes less than 8 issues in one calendar month, each issue comprising a minimum volume of 6 pages, and containing minimum printed space of 648 square inches;

(iii) being a weekly newspaper, prints and publishes less than 4 issues in one calendar month, each issue comprising a minimum volume of 8 pages and containing a minimum printed space of 864 square inches;

(iv) being a fortnightly newspaper, prints and publishes less than 2 issues in one calendar month, each issue comprising a minimum volume of 12 pages and containing minimum printed space of 1296 square inches;

(v) being a monthly, brings out no issue in one calendar month or brings out an issue which does not comprise minimum volume of 24 pages and contain printed space of 1920 square inches;

(vi) being a newspaper of any other class not covered by categories (i) to (v) above, prints and publishes less than the declared number of issues of that class comprising minimum printed space of 4,000 square inches.]

Authentication of declaration.

6. Each of the two originals of every declaration so made and subscribed as aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposit.

One of the said originals shall be deposited among the office records of the Magistrate and the other shall be deposited among the records of the High Court of Judicature, Jammu and Kashmir State.

Inspection and supply of copies.

The officer-in-charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said declaration duly attested, on payment of a fee of two rupees.

Attested copy of declaration to be *prima facie* evidence.

7. In any legal proceeding whatever, civil as well as criminal, the production of a duly attested copy of such declaration as is aforesaid shall be held (unless the contrary be proved) to be sufficient evidence as against the per-

son whose name shall be subscribed to such declaration that the said person was printer or publisher or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration. In the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be sufficient evidence in similar circumstances.

Declaration by persons who have ceased to be editors, printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as aforesaid and who may subsequently cease to be [1][the editor or/and printer or/and publisher] of the newspaper mentioned in such declaration may appear before the Magistrate and make and subscribe in duplicate the following declaration:—

"I, A. B., declare that I have ceased to be the [2][editor or/and printer or/and publisher,] of the newspaper entitled...."

[3][Such person shall be assumed to be the editor or/and printer or/and publisher, as the case may be, of such newspaper until he subscribes the requisite declaration under this section.]

Authentication of filing.

Each original of the latter declaration shall be authenticated by the signature and official seal of the Magistrate before whom the said latter declaration shall have been made and one original of the said latter declaration shall be filed along with/each original of the former declaration.

Inspection and supply of copies.

The officer-in-charge of each original of the latter declaration shall allow any person applying, to inspect that original on payment of a fee of one rupee and shall give to any person applying, a copy of the said latter declaration duly attested on payment of a fee of two rupees.

Putting copies in evidence.

In all trials in which an attested copy of the former declaration shall have been put in evidence, it shall be lawful to put in evidence an attested copy of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the newspaper mentioned therein.

1. Substituted *vide* Act XXII of 2003 for "printer or publisher."
2. Substituted *vide ibid* for "printer (or publisher or printer and publisher)."
3. Paragraph inserted *vide ibid*.

8-A. If any person, whose name has appeared as editor of a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before the Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making enquiry or causing such enquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.

9. (1) Any person keeping a printing press who is required to make a declaration under section 4, may be required by the Magistrate before whom the declaration is made, [1][x x x x x x x] to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount, not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose:

Deposit of security by keepers of printing presses.

Provided that, if a deposit has been required under sub-section (3) from any previous keeper of the printing press, the security which may be required under this sub-section may amount to three thousand rupees.

(2) Where security required under sub-section (1) has been deposited in respect of any printing press, and for a period of [2][two years] from the date of the declaration mentioned in sub-section (1), no order is made by the [3][Government] under section 10 in respect of such press, the security shall, on application by the keeper of the press, be refunded.

1. Words "for reasons to be recorded in writing" omitted *vide* Act XXII of 2003.
2. Substituted *vide* Act XXII of 2003 for "three months".
3. In section 9 (2) word "Government" substituted for "Minister of State" *vide* Act II of 1997.

(3) Whenever it appears to the [1][Government] that any printing press kept in any place in the territories of the Jammu and Kashmir State, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible represetations of the nature described in section 10, sub-section (1), the [1][Government] may, by notice in writing to the keeper of the press stating or describing such words, signs or visible representations, order the keeper to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than three thousand rupees as the [1][Government] may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

Power to declare security of press forfeited in certain cases.

10. (1) Whenever it appears to the [1][Government] that any printing press in respect of which any security has been ordered to be deposited under section 9 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which —

(*a*) incite to or encourage, or tend to incite to or to encourage the commission of any offence of murder or any cognizable offence involving violence, or

(*b*) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, or

[2][which tend directly or indirectly —

(*c*) to seduce any officer or soldier in the Military forces [3][x x x x x] or any Police officer from his allegiance or his duty, or

(*d*) to bring into hatred or contempt [4][the Sadar-i-Riyasat] or the Government established by law in this State or the administration of justice or any class or section of the State Subjects, or to excite disaffection towards [4][the Sadar-i-

1. In sections 9(3), 10, 12, 13, 14(2) and (3), 15, 17, 18, 20, 26 and 33 the word "Government" substituted for "Minister of State" *vide* Act X of 1996.
2. In section 10 words beginning with "which tend" and ending with sub-clause (ii) substituted by Act VIII of 1994. For correction see Government Gazette 18th Jeth, 1997.
3. Words "of His Highness the Maharaja Bahadur" omitted *vide* Act X of 2010.
4. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur".

Riyasat] or the said Government, or [1][to make malicious attacks on the said Government or any of the Ministers or to grossly misrepresent the policy and the activities of the said Government, or]

(*e*) to encourage or incite any person to interfere with administration or the law or with the maintenance of law and order or to commit any offence, or

(*f*) to intimidate a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions, or

(*g*) to promote feelings of enmity or hatred between different classes of the State Subjects, or [2][to indulge in vulgar abuse of their contemporaries or parties or communities to whom they are opposed, or]

(*h*) to prejudice the recruiting of persons to serve in any of the Military forces or in any Police force, or to prejudice the training, discipline or administration of any such force, or

[3][(*i*) to promote feelings of provincial or territorial hatred or feelings of religious exceptionalism, hatred or contempt],

the Government may by notice in writing to the keeper of such printing press, stating or describing the words, signs or visible representations which in their opinion are of the nature described above,

(*i*) where security has been deposited, declare such security, or any portion thereof, to be forfeited to the Government ; or

(*ii*) where security has not been deposited, declare the press to be forfeited to the Government; and may also declare all copies of such newspaper, book, or other document whenever found in the Jammu and Kashmir State to be forfeited to the Government].

EXPLANATION 1.—No Expression of approval or admiration made in a historical or literary work shall be deemed to be of the nature presented on this sub-section unless it has the tendency described in clause (a).

[4][EXPLANATION 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (d) of this sub-section.

EXPLANATION 3.—Comments expressing disapprobation

1. Inserted *vide* Act XXII of 2003.
2. Inserted *vide ibid.*
3. Clause (i) inserted *vide* Act VII of 2008.
4. Explanations 2, 3 and 4 inserted *vide* Act VIII of 1994. For Correction see Government Gazette dated 18th Jeth, 1997.

of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in clause (d) of this sub-section.

EXPLANATION 4.—Words pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of the State Subjects shall not be deemed to be words of the nature described in clause (g) of this sub-section.]

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security or any portion thereof, to be forfeited, the declaration made in respect of such press under section 4 shall be deemed to be annulled.

Deposit of further security.

11. (1) Where the security given in respect of any press, or any portion thereof, has been declared forfeited under section 10 or section 12 every person making a fresh declaration in respect of such press under section 4 shall deposit with the Magistrate before whom such declaration is made security to such an amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(2) Where a portion only of the security given in respect of such paper has been declared forfeited under section 10 or section 12, any unforfeited balance still in deposit shall be taken as a part of the amount of security required under sub-section (1).

Power to declare further security and publications forfeited.

12. (1) If, after security has been deposited under section 11, the printing press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representation which in the opinion of the [1][Government], are of the nature described in section 10, sub-section (1), the [1][Government] may, by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations, declare —

(*a*) the further security so deposited, or any portion

1. See footnote under section 9.

thereof, and

(*b*) all copies of such newspaper, book or other document wherever found in the Jammu and Kashmir State, to be forfeited to the Government.

(2) After the expiry of ten days from the date of issue of a notice under sub-section (1) the declaration made in respect of such press under section 4 shall be deemed to be annulled.

Issue of search-warrant.

13. Where any printing press is, or any copies of any newspaper, book or other document are declared forfeited to the Government [1][under section 12] [2][the Magistrate may issue] a warrant empowering any Police officer, not below the rank of a Sub-Inspector to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises —

(*a*) where any such property may be or may be reasonably suspected to be, or

(*b*) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

Deposit of security by publisher of newspaper.

14 (1) Any publisher of a newspaper who is required to make a declaration under section 5, may be required by the Magistrate before whom the declaration is made, [3][x x x x] to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount, not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose:

Provided that, if a deposit has been required under sub-section (3) from any previous publisher of the newspaper, the security which may be required under this sub-section may amount to three thousand rupees.

(2) Where security required under sub-section (1) has been deposited in respect of any newspaper, and for a period of [4][two years] from the date of declaration mentioned in sub-section (1), no order is made by the [5][Government] under section 15 in respect of such newspaper, the security shall, on application by the publisher of the newspaper, be refunded.

1. Substituted *vide* Act XXII of 2003 for "under this Act".
2. Substituted *vide ibid* for "the Govermcnt may dirert the Magistrate to issue"
3. Words "for reasons to be recorded in writing" omitted *vide* Act XXII of 2003.
4. Substitued *vide ibid* for "three months".
5. See footnote under section 9.

(3) Whenever it appears to the [1][Government] that a newspaper published within the territories of the Jammu and Kashmir State, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), contains any words, signs or visible representations of the nature described in section 10, sub-section (1) the [1][Government] may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than three thousand rupees, as the [1][Government] may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

Power to declare security forfeited into certain cases.

15 (1) If any newspaper in respect of which any security has been ordered to be deposited under section 14 contains any words, signs or visible representations which, in the opinion of the [1][Government], are of the nature described in section 10, sub-section (1), the [1][Government] may, by notice in writing to the publisher of such newspaper stating or describing such words, signs of visible representations —

(*a*) where the security has been deposited, declare such security, or any portion thereof, to be [2][forfeited to the Government] ; or

(*b*) where the security has not been deposited, annul the declaration made by the publisher of such newspaper under saction 5;

and may also declare all copies of such newspaper, wherever found in the Jammu and Kashmir State, to be [2][forfeited to the Government.]

After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security, or any portion thereof, to be forfeited, the declaration made by the publisher of such newspaper under section 5, shall be deemed to be annulled.

1. See footnote under section 9.
2. Substituted *vide* Act X of 2010 for "forfeited to His Highness the Maharaja Bahadur."

Deposit of further security.

16. (1) Where the security given in respect of any newspaper, or any portion thereof, is declared forfeited under section 15 or section 17, any person making a fresh declaration under section 5, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such an amount, not beeing less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(2) Where a portion only of the security given in respect of such newspaper has been declared forfeited under section 15 or section 17, any unforfeited balance still in deposit shall be taken as part of the amount of security required under sub-section (1).

Power to declare further security and newspapers forfeited.

17 (1) If after security has been deposited under section 16, the newspaper again contains any words, signs or visible representations, which, in the opinion of the [1][Government], are of the nature described in section 10, sub-section (1), he may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

(*a*) the further security so deposited or any portion thereof, and

(*b*) all copies of such newspaper, wherever found in the State territories,

to be [2][forfeited to the Government.]

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5, shall be deemed to be annulled and no further declaration in respect of such newspaper shall be made save with the permission of the [1][Government.]

Power to declare certain publications forfeited and to issue search-warrants for same.

18. Where any newspaper, book or other document wherever made, appears to the [2][Government] to contain any words, signs or visible representations of the nature described in section 10, sub-section (1), the [2][Government] may, by notification in the Jammu and

1. See footnote under section 9.
2. Subsitituted *vide* Act X of 2010 for "forfeited to His Highness the Maharaja Bahadur."

Kashmir Government Gazette, stating the grounds of its opinion, declare every copy of such book or other document to be [1][forfeited to the Government] and thereupon any Police officer may seize the same, wherever found in the Jammu and Kashmir State, and any Magistrate may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

Power to detain packages containing certain publications when imported into the State.

19. Any officer of the State Customs and Excise Department not below the rank of [2][Assistant Inspector or any other officer authorised by the Government in this behalf]may detain any package brought into the Jammu and Kashmir State which he suspects to contain any newspapers, books or other documents of the nature described in section 10, sub-section (1), and shall forthwith forward copies of the newspapers, books or other documents found therein to [3][such officer as the Government may appoint in this behalf to be disposed of in such manner as the Government may direct.]

Consequences of failure to deposit security required.

20. (1) Where a deposit is required from the keeper of a printing press under section 9, such press shall not be used for the printing or publishing of any newspaper, book or other document after the expiry of the time allowed to make the deposit until the deposit has been made, and where a deposit is required from the keeper of a printing press under section 11, such press shall not be so used until the deposit has been made.

(2) Where any printing press is used in contravention of sub-section (1), the [4][Government], may, by notice in writing to the keeper thereof, declare the press to be [1][forfeited to the Government.]

(3) Where a deposit is required from the publisher of a newspaper under section 14 and the deposit is not made within the time allowed, the declaration made by the publisher under section 5, shall be deemed to be annulled.

1. Substiituted *vide* Act X of 2010 for "forfeited to His Highness the Maharaja Bahadur."
2. Substituted *vide* Act IV of 2000 for "Assistant Inspector."
3. Substituted *vide ibid* for certain words.
4. See footnote under section 9.

Powers of High Court.

Application to High Court to set aside order of forfeiture.

21. (1) The keeper of a printing press who has been ordered to deposit security under sub-section (3) of section 9, or the publisher of a newspaper who has been ordered to deposit security under sub-section (3) of section 14, or any person having an interest in any property in respect of which an order of forfeiture has been made under section 10, section 21, section 15, section 17 or section 18 may, within two months from the date of such order, apply to the High Court, to set aside such order, and the High Court shall decide if the newspaper, book or other document in respect of which the order was made did or did not contain any words, signs or visible representations of the nature described in section 10, sub-section (1).

(2) The keeper of a printing press in respect of which an order of forfeiture has been made under sub-section (2) of section 20 on the ground that it has been used in contravention of sub-section (1) of that section may apply to the High Court to set aside the order on the ground that the press was not so used.

Hearing by Special Bench.

22. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

Order of Special Bench setting aside forfeiture.

23. (1) If it appears to the Special Bench on an application under sub-section (1) of section 21 that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 10, sub-section (1), the Special Bench shall set aside the order.

(2) If it appears to the Special Bench on an application under sub-section (2) of section 21 that the printing press was not used in contravention of sub-section (1) of section 20, it shall set aside the order of forfeiture.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

Evidence to prove nature or tendency of newspapers.

24. On the hearing of an application under sub-section (1) of section 21 with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature

or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order was made.

Procedure in High Court.

25. The High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of the Court on proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Delivery of books and newspapers

[1][**26.** The printer of every book and newspaper printed or lithographed in the Jammu and Kashmir State and the publisher of every book printed or lithographed outside but published in the State shall,

(*a*) in the case of a book, within one calendar month after the day it shall first be delivered out of the press ; and

(*b*) in the case of the newspaper, as soon as an issue is published,

deliver at such place and to such officer as the Government may direct free of expense two printed or lithographed copies of the whole of such book or newspaper as the case may be together with all maps, prints or other engravings belonging thereto, finished or coloured in the same manner as the best copies of the same ; the copies so delivered being bound, sewed, or stitched together and upon the best paper on which such copies of the book or newspaper shall be printed or lithographed :

Provided that, nothing in this section shall apply to any second or subsequest edition of the book in which edition no additions or alterations either in the book itself or in the maps, prints or other engravings belonging thereto have been made and a copy of the first or some preceding edition of which has already been delivered under this Act.]

Penalties.

Penalty for printing contrary to rule in section 3.

27. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 shall, on conviction before a Magistrate be punished by fine not exceeding two thousand rupees or by simple imprisonment for a term not exceeding six months or, by both.

1. Section 26 substituted *vide* Act IV of 1999 (For earlier amendments see Acts III of 1990, VIII of 1994, X of 1996 and II of 1997.)

Penalty for keeping press without making declaration required by section 4.

28. Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 shall, on conviction before a Magistrate, be punished by fine not exceeding two hundred rupees, or by simple imprisonment for a term not exceeding six months, or by both.

Punishment for making false statement.

29. Any person who shall in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.

Penalty for editing, printing or publishing periodicals without conforming to rules.

30. Whoever shall edit, print or publish any newspaper without conforming to the rules herein before laid down, or whoever shall edit, print or publish or shall cause to be edited, printed or published, any newspaper, knowing that the said rules have not been observed with respect to the newspaper shall, on conviction before a Magistrate be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding six months, or both.

Penalty for non-delivery of books.

31. [1][If any printer or publisher of any such book]as is referred to in section 26, shall fail to deliver the copies of the same pursuant to that section, or if any publisher or other person employing any such printer shall fail to supply him pursuant to that section with the maps, prints and other engravings, such printer, publisher or other person shall, on conviction, be punished with fine which may extend to fifty rupees for every default.

Penalty for failure to supply copies of newspapers *gratis*, to Government.

32. If any printer of any newspaper published in the State neglects to deliver copies of the same in compliance with section 26, he shall, on the complaint of the officer to whom copies should have been delivered or of any per son authorised by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.

1. Substituted *vide* Act IV of 1999 for "if any printer of any such book."

Penalty for keeping press or publishing newspaper without making deposit.

33. (1) Whoever keeps in his possession a presss which is used for the printing of books or papers without making a deposit under section 9 or section 11, as required by the [1][Government] or the Magistrate as the case may be, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4.

(2) Whoever publishes any newspaper without making a deposit under section 14 or section 16, as required by the [1][Government] or the Magistrate as the case may be, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5.

Jurisdiction barred.

34. Every declaration of forfeiture purporting to be made under this Act, shall, as against all persons be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court except the High Court on such application as is aforesaid and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for any thing done or in good faith intended to be done under this Act.

Return of securities-

35. Where any person has deposited any security under this Act and ceases to be a keeper of the printing press or publisher, he may apply to the Magistrate for the return of the said security, and thereupon such security shall, upon proof to the satisfaction ot the Magistrate and subject to the provisions hereinbefore contained, be returned to such person

Serving of notices.

36. Every notice under this Act shall be sent to a Magistrate who shall cause it to be served in the manner provided for the services of summonses under the [2]Code of Criminal Procedure Samvat 1969.

Conduct of searches.

37. Every warrant issued under this Act shall, so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the [2]Code of Criminal Procedure Samvat 1969.

1. See footnote under section 9.
2. Now Code of Criminal Procedure, 1989.

Unauthorised News-Sheets and Newspapers.

Authorisation of persons to publish news-sheets.

38. (1) The Magistrate may, by order in writing and subject to such conditions as he may think fit to impose, authorise any person by name to publish a news-sheet from time to time.

(2) A copy of an order under sub-section (1) shall be furnished to the person thereby authorised.

(3) The Magistrate may at any time revoke an order made by him under sub-section (1).

Power to seize and destroy unauthorised news sheets and newspapers.

39. (1) Any Police officer, or any other person empowered in this behalf by the [1][Government], may seize any unauthorised news-sheet or unauthorised newspaper, wherever found.

(2) Any Magistrate of the first class may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search any place where any stock of unauthorised news-sheets or unauthorised newspapers may be or may be reasonably suspected to be, and such Police officer may seize any documents found in such place which, in his opinion, are unauthorised news-sheets or unauthorised newspapers.

(3) All documents seized under sub-section (1) shall be produced as soon as may be before any Magistrate of the first class, and all documents seized under sub-section (2) shall be produced as soon as may before the Court of the Magistrate who issued the warrant.

(4) If in the opinion of such Magistrate or Court, any of such documents are unauthorised news-sheets or unauthorised newspapers, the Magistrate or Court may cause them to be destroyed. If, in the opinion of such Magistrate or Court, any of such documents are not unauthorised news-sheets or unauthorised newspapers such Magistrate or Court shall dispose of them in the manner provided in sections 523, 524 and 525 of the [2]Code of Criminal Procedure 1969.

Power to seize and forfeit undeclared presses producing unauthorised news-sheets and newspapers.

40. (1) Where a District Magistrate or a Sub-Divisional Magistrate has reasons to believe that an unauthorised news-sheet or unauthorised newspaper is being produced from an undeclared press within the limits

1. In section 39 "Government" substituted for the words "Minister of State" *vide* Act II of 1997.
2. Now Code of Criminal Procedure, 1989.

of his jurisdiction, he may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search any place wherein such undeclared press may be or may be reasonably suspected to be, and if, in the opinion of such Police officer any press found in such place is an undeclared press and is used to produce an unauthorised news-sheet or unauthorised newspaper, he may seize such press and any documents found in the place which in his opinion are unauthorised news-sheets or unauthorised newspapers.

(2) The Police officer shall make a report of the search to the Court which issued the warrant and shall produce before such Court all property seized or such part thereof as may be readily removed.

(3) If such Court, after such enquiry as it may deem requisite, is of opinion that the press seized under this section is an undeclared press which is used to produce an unauthorised news-sheet or unauthorised newspaper, it may, by order in writing, declare the press to be [1][forfeited to the Government] If, after such enquiry, the Court is not of such opinion, it shall dispose of the press in the manner provided in sections 523, 524, and 525 of the [2]Code of Criminal Procedure, 1969.

(4) The Court shall deal with documents produced before it under this section in the manner provided in sub-section (4) of section 39.

Penalty for disseminating unauthorised news-sheets and newspapers.

41. (1) Whoever makes, [3][prints or otherwise produces], sells, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication, any unauthorised news-sheet or newspaper, shall be punishable with imprisonment of either description which may extend to six months, or with fine, or [4][with both].

(2) Any offence punishable under sub-section (1) and any abetment of any such offence shall be cognizable.

Operation of other laws not barred.

42. Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act.

1. Substituted *vide* Act X of 2010 for "forfeited to His Highness the Mahnraja Bahadur."
2. Now Code of Criminal Procedure, 1989.
3. Inserted *vide* Act XIV of 1999.
4. Substituted *vide ibid* for "both".

43. The [1][Government] may by notification published in the Jammu and Kashmir Government Gazette make such rules as may be necessary or desirable for carrying out the object of this Act and may similarly from time to time repeal, alter and add to such rules.

Power to make rules.

44. The Jammu and Kashmir State Press and Publications Regulation, 1971, is hereby repealed.

Repeal.

NOTIFICATION.

[*Issued by His Highness the Maharaja Bahadur dated Srinagar, the 27th June,* 1932/14*th Har*, 198). *Published in Government Gazette, dated* 24*th Har*, 1989.]

No. 13-L/198). Whereas it is necessary to determine the status of Jammu and Kashmir State Subjects in foreign territories and to inform the Governments of Foreign States as to the position of their nationals in this State; it is hereby commanded and notified for public information, as follows :—

1, That all emigrants from the Jammu and Kashmir State to foreign territories shall be considered State Subjects and also the descendants of these emigrants born abroad for two generations :

Provided that, these nationals of the Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by the laws, unless they fulfil the conditions laid down by those laws and rules for the specific purposes mentioned therein.

2. The foreign nationals residing in the State of Jammu and Kashmir shall not acquire the nationality of the Jammu and Kashmir State until after the age of 18 on purchasing immovable property under permission of an *ijasatnama* and on obtaining a *rayatnama* after ten years' continuous residence in the Jammu and Kashmir

5. In section 43 "Government" substituted for the words "Minister of State" *vide* Act II of 1997.

State as laid down in Notification No. I-L of 1984, dated 20th April, 1927.

3. Certificates of nationality of the Jammu and Kashmir State may, on application, be granted by the Minister-in-charge of the Political Department in accordance with the provisions of section 1 of this Notification.

THE STATE SOLDIERS (LITIGATION) ACT, 1989 (1932 A.D.)

Act No. V of 1989.

CONTENTS.

Preamble.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Circumstances in which a State soldier shall be deemed to be serving under special condiitons.
4. Particulars to be furnished in plaints, applications or appeals to Courts.
5. Power of Deputy Commissioner to intervene in case of unrepresented State soldier.
6. Notice to be given in case of unrepresented State soldier.
7. Postponement of proceedings.
8. Court may proceed when no certificate received.

SECTION.

9. Postponement of proceedings against State soldier on leave.
10. Power to set aside decrees and orders passed against State soldier serving under war or special conditions.
11. Modification of law of limitation where soldier or his legal representative is a party.
12. Power of Court to refer question to prescribed authority.
13. Rule making power.
14. Power to apply the provisions of the Act to other persons in the service of the Government.
15. Repeal.

THE STATE SOLDIERS (LITIGATION) ACT, 1989 (1932 A.D.)

Act No. V of 1989.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Notification No.* 9-*L*/1932, *dated* 1*st June* 1932/20*th Jeth*, 1989. *Publisued in the Covernment Gazette dated* 28*th Jeth*, 1989.]

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of the State soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of the State soldiers serving under special conditions; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the State Soldiers (Litigation) Act, 1989.

(2) It extends to the whole of Jammu and Kashmir State.

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Court" means a civil or revenue Court;

(*b*) "State soldier" means any person subject to the Kashmir Service Regulations and enlisted in and borne on the strength or any corps, unit or department administered by the Army Department of Jammu and Kashmir Government;

(*c*) "prescribed" means prescribed by rules made under this Act; and

(*d*) "proceeding" includes any suit, appeal or application

Circumstances in which a State soldier shall be deemed to be serving under special conditions.

3. For the purposes of this Act, a State soldier shall be deemed to be, or as the case may be, to have been serving—

(*a*) under special conditions—

(*i*) when he is or has been serving under peace conditions in any province of the Jammu and Kashmir State other than the province where the Court before which the proceedings are to be taken is situated; provided that the Commanding Officer

1. Vide section 14 of the Act, the Government have the power to apply the provisions of this Act to any other class of persons in the service of the Government.

of the individual shall certify in writing that the individual cannot attend the Court for reasons of State duty,

(*ii*) when he is or has been serving under war conditions or overseas, or at any place outside the territories of the Jammu and Kashmir State;

(*b*) under war conditions—

when he is or has been, at any time during the continuance of any hostilites declared by [1][the Government] by notification in the Jammu and Kashmir Government Gazette to constitute a state of war for the purposes of the Act or at any time during a period of six months thereafter,—

(*i*) under orders to proceed on field service, or for frontier duty at any place within the territorial limits of Gilgit and Ladakh, or

(*ii*) serving with any unit which is for the time being mobilized for service in Gilgit or Ladakh or mobilized for any purpose whatsoever.

[2][EXPLANATION.— For the purposes of this section and with effect from the 3rd day of September, 1939, a soldier who is or has been a prisoner of war shall be deemed to be or to have been serving under war conditions.]

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a State soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Power of Deputy Commissioner to intervene in case of unrepresented State soldier.

5. If any [3][Deputy Commissioner] has reason to believe that a State soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the [2][Deputy Commissioner] may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented State soldier.

6. (1) If a [3][Deputy Commissioner] has certified under section 5, or if the Court has reason to believe that a State soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represent-

1. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur."
2. Added *vide* Ordinance XII of 1999.
3. Substituted *vide* Act III of 2008 for "Wazir-i-Wazarat."

ed by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that, the Court may refrain from suspending the proceeding and issuing the notice if—

(*a*) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of prior purchase, or

(*b*) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

[1][(2) If it appears to the Court before which any proceeding is pending that a State soldier though not a party to the proceeding is materially concerned in the outcome of the proceeding and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority.]

Postponement of proceedings.

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Court may proceed when no certificate received.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice, that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

1. Existing section 6 numbered as sub-section (1) and sub-section (2) added *vide* Ordinance XII of 1999.

Postponement of proceedings against State soldier on leave.

9. When any document purporting to be signed by the Commanding Officer of a State soldier who is a party to any proseeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier--

(*a*) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(*b*) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect ofsuch soldier may, in any case such as is refrered to in the proviso to [1][sub-section (1)of section 6] and shall, in any other case, be postponed in the manner provided in section 7 .

Power to set aside decrees and orders passed against State soldier serving under war or special conditions.

10. (1) In any proceeding before a Court in which a decree or order has been pssed against a State soldier [2][x x x x] whilst he was serving under any special conditions, the soldier [3][or if he is dead, his legal representative] may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

[4][(2) The period of limitation for an application under sub-section (1) shall be ninety days from the date of the decree or order, or where the summons or notice was not duly served on the soldier in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order, and the provisions of section 5 of the Limitation Act, 1995 shall apply to such application.]

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

1. Substituted *vide* Ordinance XII of 1939 for "section 6".
2. Certain words omitted *vide ibid*.
3. Added *vide ibid*.
4. Substituted *vide ibid* for existing sub-section (2).

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

Modification of law of limitation where soldier or his legal representative is a party.

[1][**11.** In computing the period of limitation prescribed by sub-section (2) of sectson 10 of this Act, the Limitation Act, 1995, or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been a State soldier, or is the legal representative of a State soldier, the period during which the soldier has been serving under any special conditions and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next of kin by the authorities in the State, shall be excluded :

Provided that, this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of prior purchase.

Power of Court to refer question to prescribed authorities.

[2][**12.** If any Court is in doubt whether, for the purposes of section 10 or section 11, a State soldier is or was at any particular time serving under special conditions, or has died while so serving, or as to the date of such death or as to the date on which official intimation of such death was sent to his next of kin by the authorities in the State, the Court may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.]

Rule making power.

13. [3][The Government] after consulting the High Court, may, by notification in the Jammu and Kashmir Government Gazette, make rules to provide for all or any of the following matters, namely :—

(*a*) the manner and form in which any notice or certificate under this Act shall be given ;

(*b*) the period for which proceedings or any class of proceedings shall be postponed under section 7 ;

(*c*) the persons who shall be the prescribed authorities for the purposes of this Act;

(*d*) any other matter which is to be or may be prescribed; and

1. Section 11 substituted *vide* Ordinance XII of 1999.
2. Seetion 12 substituted *vide ibid*.
3. Substituted *vide* Act VII of 2001 for "His Highness the Maharaja Bahadur"

(*e*) generally, any matters incidental to the purposes of this Act.

Power to apply the provisions of the Act to other persons in the service of the Government.

14. [1][The Government] may, by notification in the Jammu and Kashmir Government Gazette, direct that all or any of the provisions of this Act shall apply to any other class of persons [2][in the service of the Government] specified in such notification in the same manner as they apply to State soldiers.

15. The Indian Soldiers Litigation Regulation, 1972 and State Council Resolution No. 6 of 28th July, 1984 are hereby repealed.

THE JAMMU AND KASHMIR STATE RANBIR PENAL CODE, 1989 (1932 A. D.)

Act No. XII of 1989.

CONTENTS.

Preamble.

SECTION. SECTION.

CHAPTER I.

INTRODUCTION.

1. Title and extent of operation of the Code.
2. Punishment of offences committed within the said territories.
3. Punishment of offences committed beyond, but which by law may be tried within, the territories.
4 Extension of the Code to extra-territorial offences.
5. Omitted.

CHAPTER II.

GENERAL EXPLANATIONS.

6. Definitions in the Code to be understood subject to exceptions.
7. Sense of expression once explained.
8. Gender
9. Number.
10. "Man." "Woman."
11. "Person."
12 "Public."

1. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur".
2. Substituted *vide* Act X of 2010 for "in the service of His Highness the Maharaja Bahadur".

SECTION.

13. Omitted.

13-A. "King."

14. "State servant."

15. "Jammu aud Kashmir State"

16. "Government of India."

17. Omitted.

18. Omitted.

19. "Judge."

20. "Court of Justice."

21. "Public servant."

22. "Movable property."

23. "Wrongful gain".

"Wrongful loss."

Gaining wrongfully.

Losing wrongfully.

24. "Dishonestly."

25. "Fraudulently."

26. "Reason to believe."

27. Property in possession of wife, clerk or servant.

28. "Counterfeit.

29. "Document."

30. "Valuable security."

31. "A will."

32. Words referring to acts include illegal omissions.

33. "Act."

"Omission."

SECTION.

34. Acts done by several persons in furtherance of common intention.

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.

36. Effect caused partly by act and partly by omission.

37. Co-operation by doing one of several acts constituting an offence.

38. Persons concerned in criminal act may be guilty of different offences.

39. "Voluntarily."

40. "Offence."

41. "Special law"

42. "Local law."

43. "Illegal."

"Legally bound to do."

44. "Injury."

45. "Life."

46. "Death."

47. "Animal."

48. "Vessel."

49. "Year."

"Month."

50. "Section"

51. "Oath."

52. "Good faith."

52-A. "Stamp."

SECTION.

CHAPTER III.

OF PUNISHMENTS.

53. Punishments.

54. Commutation of sentence of death.

55. Commutation of sentence of imprisonment for life.

56. Omitted.

57. Fractions of terms of punishment.

58. } Omitted.
59. }

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. Sentence of forfeiture of property.

62. Forfeiture of property, in respect of offenders punishable with death, imprisonment for life or imprisonment for 7 years or more.

63. Amount of fine.

64. Sentence of imprisonment for non-payment of fine.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

66. Description of imprisonment for non-payment of fine.

67. Imprisonment for non-payment of fine, when offence punishable with fine only.

SECTION.

68. Imprisonment to terminate on payment of fine.

69. Termination of imprisonment on payment of proportional part of fine.

70. Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

71. Limit of punishment of offence made up of several offences.

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

73. Solitary confinement.

74. Limit of solitary confinement.

75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

CHAPTER IV.

GENERAL EXCEPTIONS.

76. Act done by a person bound, or by mistake of fact believing himself bound, by law.

77. Act of Judge when acting judicially.

78. Act done pursuant to the judgment or order of Court.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law.

80. Accident in doing a lawful act.

SECTION.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.

82. Act of a child under seven years of age.

83. Act of a child above seven and under twelve of immature understanding.

84. Act of a person of unsound mind.

85. Act of a person incapable of judgment by reason of intoxication caused against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

88. Act not intended to cause death, done by consent in good faith for person's benefit.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.

Provisos.

90. Consent known to be given under fear or misconception.

Consent of insane person.

Consent of child.

91. Exclusion of acts which are offences independently of harm caused.

92. Act done in goed faith for benefit of a person without consent.

SECTION.

Provisos.

93. Communication made in good faith.

94. Act to which a person is compelled by threats.

95. Act causing slight harm.

Of the Right of Private Defence.

96. Things done in private defence

97. Right of private defence of the body and of property.

98. Right of private defence against the act of a person of unsound mind, etc.

99. Acts against which there is no right of private defence.

Extent to which the right may be exercised.

100. When the right of private defence of the body extends to causing death.

101. When such right extends to causing any harm other than death.

102. Commencement and continuance of the right of private defence of the body.

103. When the right of private defence of property extends to causing death.

104. When such right extends to causing any harm other than death.

105. Commencement and continuance of the right of private defence of property.

SECTION.

106. Right of private defence against deadly assault when there is risk of harm to innocent person.

CHAPTER V.

OF ABETMENT.

107. Abetment of a thing.

108. Abettor.

108-A. Abetment in Jammu and Kashmir State of offences outside the State.

109 Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

110. Punishment of abetment if person abetted does act with different intention from that of abetter.

111. Liability of abettor when one act abetted and different act done.

Proviso.

112. Abettor when liable to cumulative punishment for act abetted and for act done.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

114. Abetter present when offence is committed.

115. Abetment of offence punishable with death or transportation for life—

if offence not committed.

SECTION.

if act causing harm be done in consequence.

116. Abetment of offence punishable with imprisonment—if offence be not committed ;

if abettor or persen abetted be a public servant whose duty it is to prevent offence.

117. Abetting commission of offence by the public, or by more than ten persons.

118. Concealing design to commit offence punishable with death or imprisonment for life—

if offence be committed ;

if offence be not committed.

119. Public servant concealing design to commit offence which it is his duty to prevent—

if offence be committed;

if offence be punishable with death, etc. ;

if offence be not committed.

120. Concealing design to commit offence punishable with imprisonment—

if offence be committed ;

if offence be not committed.

CHAPTER V-A.

CRIMINAL CONSPIRACY.

120-A. Definition of criminal conspiracy.

SECTION.

120-B. Punishment of criminal conspiracy.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Waging, or attempting to wage war, or abetting waging of war, against the Sadar-i-Riyasat the Government or the Government of India.

121-A. Conspiracy to commit offences punishable by section 121.

122. Collecting arms, etc., with intention of waging war against the Sadar-i-Riyasat, the Government or the Government of India.

123. Concealing with intent to facilitate design to wage war.

124. Assaulting Ministers of the Government with intent to compel or restrain the exercise of any lawful power.

124-A. Sedition.

125. Waging war against any Asiatic Power in alliance with the Government of India.

126. Committing depredation on territories of Power at peace with the Government of India.

127. Receiving property taken by war or depredation mentioned in sections 125 and 126.

128. Public servant voluntarily allowing prisoner of State or war to escape.

129. Public servant negligently suffering such prisoner to escape.

SECTION.

130. Aiding escape of, rescuing or harbouring such prisoner.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY.

131. Abetting mutiny, or attempting to seduce a soldier from his duty.

132. Abetment of mutiny, if mutiny is committed in consequence thereof.

133. Abetment of assault by soldier on his superior officer, when in execution of his office.

134. Abetment of such assault, if the assault is committed.

135. Abetment of desertion of soldier.

136. Harbouring deserter.

137. Omitted.

138. Abetment of act of insubordination by soldier.

138-A. } Omitted.
139. }

140. Wearing garb or carrying token used by soldier.

CHAPTER VIII.

OF OFFENCES AGAINST TH PUBLIC TRANQUILLITY.

141. Unlawful assembly.

142. Being member of unlawful assembly.

143. Punishment.

SECTION.

144. Joining unlawful assembly, armed with deadly weapon.

145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

146 Rioting.

147. Punishment for rioting.

148. Rioting, armed with deadly weapon.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Hiring, or conniving at hiring, of persons to join unlawful assembly.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

152. Assaulting or obstructing public servant when suppressing riot, etc.

153. Wantonly giving provocation, with intent to cause riot—

if rioting be committed ;

if not committed.

153-A. Promoting enmity between classes.

154. Owner or occupier of land on which an unlawful assembly is held.

155. Liability of person for whose benefit riot is committed.

156. Liability of agent of owner or occupier for whose benefit riot is committed.

SECTION.

157. Harbouring persons hired for an unlawful assembly.

158. Being hired to take part in an unlawful assembly or riot; or to go armed.

159. Affray.

160. Punishment for committing affray.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Public servant taking gratification other than legal remuneration in respect of an official act.

162. Taking gratification, in order, by corrupt or illegal means, to influence public servant.

163. Taking gratification, for exercise of personal influence with public servant.

164. Punishment for abetment by public servant of offences defined in section 162 or 163.

165. Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

166. Public servant disobeying law, with intent to cause injury to any person.

167. Public servant framing an incorrect document with intent to cause injury.

168. Public servant unlawfully engaging in trade.

SECTION.

169. Public servant unlawfully buying or bidding for property.

170. Personating a public servant.

171. Wearing garb or carrying token used by public servant with fraudulent intent.

CHAPTER IX-A.

OFFENCES RELATING TO ELECTIONS.

171-A. "Candidate", "Electoral right", defined.

171-B. Bribery.

171-C. Undue influence at elections.

171-D. Personation at elections.

171-E. Punishment for bribery.

171-F. Punishment for undue influence or personation at an election.

171-G. False statement in connection with an election.

171-H. Illegal payment in connection with an election.

171-I. Failure to keep election accounts.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Absconding to avoid service of summons or other proceedings.

173. Preventing service of summons or other proceeding, or preventing publication thereof.

SECTION.

174. Non attendance in obedience to an order from public servant.

175. Omission to produce document to public servant by person legally bound to produce it.

176. Ommission to give notice or information to public servant by person legally bound to give it.

177. Furnishing false information.

178. Refusing oath or affirmation when duly required by public servant to make it.

179. Refusing to answer public servant authorised to question.

180. Refusing to sign statement.

181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

182. False information with intent to cause public servant to use his lawful power to the injury of another person.

183. Resistance to the taking of property by the lawful authority of a public servant.

184. Obstructing sale of property offered for sale by authority of public servant.

185. Illegal purchase or bid for property offered for sale by authority of public servant.

186. Obstructing public servant in discharge of public functions.

187. Omission to assist public servant when bound by law to give assistance.

SECTION.

188. Disobedience to order duly promulgated by public servant.

189. Threat of injury to public servant.

190. Threat of injury to induce person to refrain from applying for protection to public servant.

190-A. Dissemination of contents of proscribed documents.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Giving false evidence.

192. Fabricating false evidence.

193. Punishment for false evidence.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence;

if innocent person be thereby convicted and executed.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment.

196. Using evidence known to be false.

197. Issuing or signing false certificate.

198. Using as true a certificate known to be false.

199. False statement made in declaration which is by law receiveable as evidence.

SECTION.

200. Using as true such declaration knowing it to be false.

201. Causing disappearance of evidence of offence, or giving false information, to screen offender—

if a capital offence;

if punishable with imprisonment for life;

if punishable with less than ten years' imprisonment.

202. Intentional omission to give information of offence by person bound to inform.

203. Giving false information respecting an offence committed.

204. Destruction of document to prevent its production as evidence.

205. False personation for purpose of act or proceeding in suit or prosecution.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.

208. Fraudulently suffering decree for sum not due.

209. Dishonestly making false claim in Court.

210. Fraudulently obtaining decree for sum not due.

211. False charge of offence made with intent to injure.

SECTION.

212. Harbouring offender—

if a capital offence ;

if punishable with imprisonment for life, or with imprisonment.

213. Taking gift, etc., to screen an offender from punishment—

if a capital offence ;

if punishable with imprisonment for life, or with imprisonment.

214. Offering gift or restoration of property in consideration of screening offender—

if a capital offence ;

if punishable with imprisonment for life, or with imprisonment.

215. Taking gift to help to recover stolen property, etc.

216. Harbouring offender who has escaped from custody or whose apprehension has been ordered —

if a capital offence ;

if punishable with imprisonment for life, or with imprisonment.

216-A. Penalty for harbouring robbers or dacoits.

216-B. Definition of "harbour" in sections 212, 216 and 216-A.

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

SECTION.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.

220. Commitn.ent for trial or confinement by person having authority who knows that he is actfng contrary to law.

221. Intentional omission to apprehend on the part of public servant bound to apprehend.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

223. Escape from confinement on custody negligently sufferred by public servant.

224. Resistance or obstruction by a person to his lawful apprehension.

225. Resistance or obstruction to lawful apprehension of another person.

225-A. Omission to apprehend, or sufference of escape, on part of public servant, in cases not otherwise provided for.

225-B. Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

226. Omitted.

227. Violation of condition of remission of punishment.

SECTION.

228 Intentional insult or interruption to public servant sitting in judicial proceeding.

229. Personation of a juror or assessor.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. "Coin" defined.

Indian coin.

231. Counterfeiting coin.

232. Counterfeiting Indian coin.

233. Making or selling instrument for counterfeiting coin.

234. Making or selling instrument for counterfeiting Indian coin.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin ;

if Indian coin.

236. Abetting in the State the counterfeiting out of the State of coin.

237. Import or export of counterfeit coin.

238. Import or export of counterfeits of Indian coin.

239. Delivery of coin, possessed with knowledge that it is counterfeit.

240. Delivery of Indian coin, possessed with knowledge that it is counterfeit.

SECTION.

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

244. } Omitted.
245. }

246. Fraudulently or dishonestly diminishing weight or altering composition of coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.

248. Altering appearance of coin with intent that it shall pass as coin of different description.

249. Altering appearance of Indian coin, with intent that it shall pass as coin of different description.

250. Delivery of coin, possessed with knowledge that it is altered.

251. Delivery of Indian coin, possessed with knowledge that it is altered.

252. Possession of coin by person who knew it to be altered when he became possessed thereof.

253. Possession of Indian coin by person who knew it to be

SECTION.

altered when he became possessed, thereof.

254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

255. Counterfeiting Government stamp.

256. Having possession of instrument or material for counterfeiting Government stamp.

257. Making or selling instrument for counterfeiting Government stamp.

258. Sale of counterfeit Government stamp.

259. Having possession of counterfeit Government stamp.

260. Using as genuine a Government stamp known to be counterfeit.

261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

262. Using Government stamp known to have been before used.

263. Erasure of mark denoting that stamp has been used.

263-A. Prohibition of fictitious stamps.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Fraudulent use of false instrument for weighing.

SECTION.

265. Fraudulent use of false weight or measure.

266. Being in possession of false weight or measure.

267. Making or selling false weight or measure.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

268. Public nuisance.

269. Negligent act likely to spread infection of disease dangerous to life.

270. Malignant act likely to spread infection of disease dangerous to life.

271. Disobedience to quarantine rule.

272. Adulteration of food or drink intended for sale.

273. Sale of noxious food or drink

274. Adulteration of drug.

275. Sale of adulterated drugs.

276. Sale of drug as a different drug or preparation.

277. Fouling water of public spring or reservoir.

278. Making atmosphere noxious to health.

279. Rash driving or riding on a public way.

280. Rash navigation of vessel.

281. Omitted.

SECTION.

282. Conveying person by water for hire in unsafe or overloaded vessel.

283. Danger or obstruction in public way or line of navigation.

284. Negligent conduct with respect to poisonous substance.

285. Negligent conduct with respect to fire or combustible matter.

286. Negligent conduct with respect to explosive substance.

287. Negligent conduct with respect to machinery.

288 Negligent conduct with respect to pulling down or repairing buildings.

289. Negligent conduct with respect to animals.

290. Punishment for public nuisance in cases not otherwise provided for.

291. Continuance of nuisance after injunction to discontinue.

291-A. Punishment for wrongful obstruction to the use of public tanks, wells, etc.

292. Sale, etc., of obscene books etc.

293. Sale, etc., of obsecne objects to young person.

294. Obscene acts and songs.

294-A. Keeping lottery-office.

SECTION.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Injuring or defiling place of worship, with intent to insult the religion of any class.

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

296. Disturbing religious assembly.

297. Trespassing on burial-places, etc.

298. Uttering words, etc,, with deliberate intent to wound religious feelings.

298-A. Voluntarily killing or slaughtering cow or the like animals.

298-B. Keeping in possession flesh of killed or slaughtered animals as mentioned in 298-A.

298-C. Killing or slaughtering he or she buffalo.

298-D. Bringing or keeping in possession in towns flesh or untanned hide of a *gond*.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Culpable homicide.

300. Murder.

SECTION.

When culpable homicide is not murder.

301. Culpable homicide by causing death of person other than person whose death was intended.

302. Punishment for murder.

303. Punishment for murder by life convict.

304 Punishment for culpable homicide not amounting to murder.

304-A. Causing death by negligence.

305. Abetment of suicide of child or insane person.

306. Abetment of suicide.

307. Attempt to murder.

Attempts by life-convicts.

308. Attempt to commit culpable homicide.

309. Attempt to commit suicide.

310, 311. Omitted.

Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

312. Causing miscarriage.

313. Causing miscarriage without woman's consent.

314. Death caused by acts done with intent to cause miscarriage.

If act done without woman's consent.

SECTION.

315. Act done with intent to prevent child being born alive or to cause it to die after birth.

316. Causing death of quick unborn child by act amounting to culpable homicide.

317. Exposure and abandonment of child under twelve years, by parent or person having care of it.

318. Concealment of birth by secret disposal of dead body.

Of Hurt.

319. Hurt.

320. Grievous hurt.

321. Voluntarily causing hurt.

322 Voluntarily causing grievous hurt.

323. Punishment for voluntarily causing hurt.

324. Voluntarily causing hurt by dangerous weapons or means.

325. Punishment for voluntarily causing grievous hurt.

326. Voluntarily causing grievous hurt by dangerous weapons or means.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328. Causing hurt by means of poison, etc., with intent to commit an offence.

329. Voluntarily causing grievous hurt to extort property, or

SECTION.

to constrain to an illegal act.

330. Voluntarily causing hurt to extort confession, or to compel restoration of property.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

332. Voluntarily causing hurt to deter public servant from his duty.

333. Voluntarily causing grievous hurt to deter public servant from his duty.

334. Voluntarily causing hurt on provocation.

335. Voluntarily causing grievous hurt on provocation.

336 Act endangering life or personal safety of others.

337. Causing hurt by act endangering life or personal safety of others.

338. Causing grievous hurt by act endangering life or personal safety of others.

Of Wrongful Restraint and Wrongful Confinement.

339. Wrongful restraint.

340. Wrongful confinement.

341. Punishment for wrongful restraint.

342. Punishment for wrongful confinement.

343. Wrongful confinement for three or more days.

344. Omitted.

SECTION.

345. Wrongul confinement of person for whose liberation writ has been issued.

346. Wrongful confinement in secret.

347. Wrongful confinement to extort property, or constrain to illegal act.

348. Wrongful confinement to extort confession, or compel restoration of property.

Of Criminal Force and Assault.

349. Force.

350. Criminal force.

351. Assault.

352. Punishment for assault or criminal force otherwise than on grave provocation.

353. Assault or criminal force to deter public servant from discharge of his duty.

354. Assault or criminal force to woman with intent to outrage her modesty.

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

356. Assault or criminal force in attempt to commit theft of property carried by a person.

357. Assault or criminal force in attempt wrongfully to confine a person.

358. Assault or criminal force on grave provocation.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping.

SECTION.

360. Kidnapping from Jammu and Kashmir State.

361. Kidnapping from lawful guardianship.

362. Abduction.

363. Punishment for kidnapping.

364. Kipnapping or abducting in order to murder.

365 Kidnapping or abducting with intent secretly and wrongfully to confine person.

366. Kidnapping or abducting woman to compel her marriage, etc.

366-A. Procuration of minor girl.

366-B. Importation of girls from outside the State.

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

369. Kidnapping or abducting child under ten years with intent to steal from its person.

370. Buying or disposing of any person as a slave.

371. Habitual dealing in slaves.

372. Selling minor for purposes of prostitution, etc.

373. Buying minor for purposes of prostitution, etc.

374. Unlawful compulsory labour.

SECTION.

Of Rape.

375. Rape.

376. Punishment for rape.

Of Unnatural Offences.

377. Unnatural Offences.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

378. Theft.

379. Punishment for theft.

380. Theft in dwelling-house, etc.

381. Theft by clerk or servant of property in possession of master.

382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

Of Extortion.

383. Extortion.

384. Punishment for extortion.

385. Putting person in fear of injury in order to commit extortion.

386. Extortion by putting a person in fear of death or grievous hurt.

387. Putting person in fear of death or grievous hurt, in order to commit extortion.

388. Extortion by threat of accusation of an offence punishable with death, etc.

SECTION.

389. Putting person in fear of accusation of offence, in order to commit extortion.

Of Robbery and Dacoity.

390 Robbery.

When theft is robbery.

When extortion is robbery.

391. Dacoity

392. Punishment for robbery.

393. Attempt to commit robbery.

394. Voluntarily causing hurt in committing robbery.

395. Punishment for dacoity.

396. Dacoity with murder.

397. Robbery or dacoity, with attempt to cause death or grievous hurt.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Making preparation to commait dcoity.

400. Punishment for belonging to gang of dacoits.

401. Punishment for belonging to gang of thieves.

402. Assembling for purpose of committing dacoity.

Of Criminal Misappropriation of Property.

403. Dishonest misappropriation of property.

404 Dishonest misappropriation of property possessed by deceased person at the time of his death.

SECTION.

Of Criminal Breach of Trust.

405. Criminal breach of trust.

406. Punishment for criminal breach of trust.

407. Criminal breach of trust by carrier, etc.

408. Criminal breach of trust by clerk or servant.

409. Criminal breach of trust by public servant, or by banker, merchant or agent.

Of the Receiving of Stolen Property.

410. Stolen property.

411. Dishonestly receiving stolen property.

412. Dishonestly receiving property stolen in the commission of a dacoity.

413. Habitually dealing in stolen property.

414. Assisting in concealment of stolen property.

Of Cheating.

415. Cheating.

416. Cheating by personation.

417. Punishment for cheating.

418. Cheating with knowldege that wrongful loss may ensue to person whose interest offender is bound to protect.

419. Punishment for cheating by personation.

420. Cheating and dishonestly inducing delivery of property.

SECTION.

Of Fraudulent Deeds and Description of Property.

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

422. Dishonestly or fraudulently preventing debt being available for creditors.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

424. Dishonest or fraudulent removal or concealment of property.

Of Mischief.

425. Mischief.

426. Punishment for mischief.

427. Mischief causing damage to the amount of fifty rupees.

428. Mischief by killing or maiming animal of the value of ten rupees.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

430. Mischief by injury to works of irrigation or by wrongfully diverting water.

431. Mischief by injury to public road, bridge, rivier or channel.

432. Mischief by causing inundation or obstruction to public drainage attended with damage.

433. Omitted.

SECTION.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

436. Mischief by fire or explosive substance with intent to destroy house, etc,.

437. } Omitted.
438. }
439. }

440. Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass

441. Criminal trespass.

442. House-trespass.

443. Lurking house-trespass.

444. Lurking house-trespass by night.

445. House-breaking.

446. House-breaking by night.

447. Punishment for criminal trespass.

448. Punishment for house-trespass.

449. House-trespass in order to commit offence punishable with death.

450. House-trespass in order to commit offence punishable with imprisonment for life.

SECTION.

451. House tresspass in order to commit offence punishable with imprisonment.

452. House-trespass after preprration for hurt, assault or wrongful restraint.

453. Punishment for lurking house-trespass or house-breaking.

454. Lurking house trespass or house-breaking in ord r to commit offence punishable with imprisonment.

455. Lurking house- trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

456. Punishment for lurking house-trespass or house-breaking by night.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. All persons jointly concerned in lurking house tresspass or house-breaking by night punishable where death or grievous hurt caused by one of them.

461. Dishonestly breaking open receptacle containing property.

SECTION.

462. Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

[OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.]

463. Forgery.

464. Making a false document.

465. Punishment for forgery.

466. Forgery of record of Court or of public register, etc.

467. Forgery of valuable security, will, etc.

468. Forgery for purpose of cheating.

469. Forgery for purpose of harming reputation.

470. Forged document.

471. Using as genuine a forged document.

472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.

SECTION.

475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467 or possessing counterfeit marked material.

477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.

477-A. Falsificatin of accounts.

Of Trade, Property or Other Marks.

478. Trade mark.

479. Property mark.

480. Using a false trade mark.

481. Using a false property mark.

482. Punishment for using a false trade mark or property mark.

483. Counterfeiting a trade mark or property mark used by another.

484. Counterfeiting a mark used by a public servant.

485. Making or possession of any instrument for counterfeiting a trade mark or property mark.

486. Selling goods marked with a counterfeit trade mark or property mark.

SECTION.

487. Making a false mark upon any receptacle containing goods.

488. Punishment for making use of any such false mark.

489. Tempering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes

489-A. Counterfeiting currency-notes or bank-notes.

489-B. Using as genuine forged or counterfeit currency-notes or bank-notes.

489-C. Possession of forged or counterfeit currency notes or bank-notes.

489-D. Making or posessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

489-E. Making or using documents resembling currency notes on bank notes.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Breach of contract of service during voyage or journey.

491. Breach of contract to attend on and supply wants of helpless person.

492. Breach of contract to serve at distant place to which servant is conveyed at master's expense.

SECTION.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

494. Marrying again during lifetime of husband or wife.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

496. Marriage ceremony fraudulently gone through without lawful marriage.

497. Adultery.

498. Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXI.

OF DEFEMATION.

499. Defamation.

Imputation of truth which public good requires to be made or published.

Public conduct of public servants.

Conduct of any person touching any public question.

Publication of reports of proceedings of Courts.

Merits of case decided in Court, or conduct of witnesses and others concerned.

Merits of public performance.

SECTION.

Censure passed in good faith by person having lawful authority over another.

Accusation preferred in good faith to authorised person.

Imputation made in good faith by person for protection of his or other's interests.

Caution intended for good of person to whom conveyed or for public good.

500. Punishment for defamation.

501. Printing or engraving matter known to be defamatory.

502. Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Criminal intimation.

504. Intentional insult with intent to provoke breach of the peace.

505. Statements conducing to public mischief.

506. Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, etc.

507. Criminal intimidation by an anonymous communication.

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure

SECTION.

509 Word, gesture or act intended to insult the modesty of a woman.

510. Misconduct in public by a drunken person.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Punishment for attempting to commit offences punishable with imprisonment for life or imprisonment.

SECTION.

CHAPTER XXIV.

OF OFFENCES PUNISHABLE WITH WHIPPING.

512. Whipping under section 53.

513. Offences punishable with whipping in lieu of other punishment.

514. Offences punishable with whipping in lieu of or in addition to other punishment.

515. Juvenile offenders when punishable with whipping.

THE JAMMU AND KASHMIR STATE RANBIR PENAL CODE, 1989 (1932 A. D.)

Act No. XII of 1989.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Law Department Notification No.* 23-*L*/1989, *dated 6th August,* 1932/23*rd Sawan,* 1989. *Published in the Government Gazette dated* 8*th Poh,* 1989.]

CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a general Penal Code for Jammu and Kashmir State; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called the Jammu and Kashmir State Ranbir Penal Code, and shall take effect from [1]1st Har, 1949 throughout the whole of the territories [2][of the Jammu and Kashmir State which are or may become part of it].

1. This is the date when Ranbir Dand Bidhi of Samvat 1949 had come into force.
2. Substituted *vide* Act X of 2010 for "which are or may become vested in His Highness the Maharaja Bahadur".

Punishment of offences committed within the said territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Punishment of offences committed beyond, but which by law may be tried within the territories.

3. Any person liable, by any law passed [1][x x x x x] by the legislature of the State to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Extension of Code to extra-territorial offences

4. The provisions of this Code apply also to any offence committed by any subject of the State in any place without and beyond the Jammu and Kashmir State.

EXPLANATION.—In this section the word "offence" includes every act committed outside [2][the State] which, if committed in [2][the State] would be punishable under this Code.

Illustrations.

(*a*) A, a coolie, who is a State Subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in the State in which he may be found.

(*b*) B, a [3][Jammu and Kashmir State Subject] living in Indore, instigates E, to commit a murder in Bombay. B is guilty of abetting murder.

5. Omitted.

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter en-

1. Words "by His Highness the Maharaja Bahadur or" omitted *vide* Act X of 2010. (For earliar amendment see Act X of 1996.)
2. Substituted *vide* A. L. O. 2008 for "British India".
3. Substituted *vide* A. L. O. 2008 for "British subject".

titled "General Exceptions," though those exceptions are not repeated in such definition, penal provision or illustration.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven-years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, police officer, without warrant apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man," "Woman".

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person".

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public".

12. The word "public" includes any class of the public or any community.

[1]**13.** Omitted.

" King".

13-A. The word "King" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

1, Section 13 omitted *vide* Act X of 2010.

14. The words "State servant" denote all officers or servants continued, appointed or employed in the Jammu and Kashmir State by or under the authority of [1][the Sadar-i-Riyasat] [2][or Government].

"State servant".

15. The words "Jammu and Kashmir State" denote the territories [3][of the Jammu and Kashmir State which are or may become part of it.]

"Jammu and Kashmir State".

[4][**16.** "Government of India" shall

"Government of India.

(*a*) in relation to any thing done before the commencement of the Constitution of India mean the Governor General or the Governor General in Council as the case may be ; and

(*b*) in relation to anything done or to be done after the commencement of the Constitution of India mean the President.]

[5]**17.** Omitted.

18. Omitted.

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person

"Judge".

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

1. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur".
2. Words "or Government" added *vide* Act X of 1996.
3. Substituted *vide* Act X of 2010 for "which are or may become vested in His Highness the Maharaja Banadur".
4. Section 16 substituted *vide* A. L. O. 2008.
5. Section 17 omitted *vide* Act X of 2010.

(*b*) A Magistrate excercising jurisdication in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice".

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

"Public servant".

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

FIRST.—Every Civil servant of [1][the State] ;

SECOND.—Every Commissioned Officer in the Military while serving under the Government [2][x x x x] ;

THIRD.—Every Judge ;

FOURTH.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpert, or to preserve order in the Court ; and every person specially authorised by a Court of Justice to perform any of such duties ;

FIFTH.—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant;

SIXTH.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

SEVENTH.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

EIGHTH.-Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

NINTH.—Every officer whose duty it is, as such officer to take, receive, keep or expend any property on behalf of [3][the Government] or to make any survey, assessment or

1. Substituted *vide* Act X of 2010 for "His Highness".
2. Words "of His Highness" omitted *vide* Act X of 2010.
3. Substituted *vide* Act X of 2010 for "His Highness or Government".

contract on behalf of [1][the Government] or to execute any revenue-process, or to investigate or to report, on any matter affecting the pecuniary interests of [1][the Government] or to make, authenticate or keep any document relating to the pecuniary interests of [1][the Government] or to prevent the infraction of any law for the protection of the pecuniary interests of [1][the Government], and every officer in the service or pay of [1][the Government], or remunerated by fees or commission for the performance of any public duty;

TENTH —Every officer whose duty it is, as such officer to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

[2][ELEVENTH.—Every [3][Indian Government servant] in the Telegraph, Postal, Railway or Supply and Transport Department or in any other department which the Government may, by notification, hereafter specify, who is posted, and when he is performing his legitimate duties, within the territories of the Jammu and Kashmir State;]

TWELFTH.—Every servant of the Department of Devasthan ;

THIRTEENTH.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election ;

FOURTEENTH.—Every officer or servant employed by the Municipal Committee, whether for the whole or part of his time, and every member of the Committee.

EXPLANATION 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

EXPLANATION 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant whatever legal defect there may be in his right to hold that situation.

EXPLANATION 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

1. Substituted *vide* Act X of 2010 for "His Highness".
2. Clause eleventh substituted *vide* Act XIX of 1997.
3. Substituted *vide* A. L. O. 2008 for "British Indian Government Servant".

22. The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

"Movable property"

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful gain."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

"Wrongful loss"

A person is said to gain wrongfully when such person retains wrongful, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Gaining wrongfully.

Losing wrongfully.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

"Dishonestly."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

"Fraudulently."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

"Reason to believe."

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk or servant.

EXPLANATION.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant, within the meaning of this section.

28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

EXPLANATION 1.—It is not essential to counterfeiting

that the imitation should be exact.

EXPLANATION 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, as evidence of that matter.

"Document."

EXPLANATION 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used or which may be used as evidence is a document.

A writing containing directions or instructions is a document.

EXPLANATION 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowleges that he lies under legal liability, or has not a certain legal right.

"Valuable security".

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

"A will"

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act."

"Omission."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the some manner as if it were done by him alone.

When such an Act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the Act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B intending to cause Z's death knowingly co-operate in causing that effect by illegally omitting each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here though A and B are both engaged in causing Z's death. B is guilty of murder, and A, is guilty only of culpable homicide.

"Voluntarily."

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night to an inhabited house in a large town for the purpose of facilitating robbery, and thus causes the death of a person,

Here A may not have intended to cause death, and may even be sorry that the death has been caused by his act; yet, if he knew that he was likely to cause death he has caused death voluntarily.

"Offence."

40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter V-A and in the following sections namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331 347, 348, 388, 389 and 445, the word, "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of the Jammu and Kashmir State.

"Illegal."

"Legally bound to do."

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

Life."

45. The word "life" denotes the life of a human being unless the contrary appears from the context.

"Death."

46 The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal."

47. The word "animal" denotes any living creature, other than a human being.

48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Vessel."

49. Wherever the word "year" or the word " month" is used, it is to be understood that the year or the month is to be reckoned according to the Bikrimi era.

"Year."

"Month."

50. The word "section" denotes one of those portions of a chapter of this Code whice are distinguished by prefixed numeral figures.

"Section."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

"Oath."

52. Nothing is said to be done or believed in"good faith" which is done or believed without due care and attention.

"Good faith."

52-A. The word "stamp" denotes every stamp issued by [1][the Government] for revenue purposes.

"Stamp."

CHAPTER III.

OF PUNISHEENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

"Punishments".

FIRST.—Death.

SECONDLY.—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

THIRDLY.—Whipping ;

FOURTHLY.—Forfeiture of property ;

FIFTHLY.—Fine ;

SIXTHLY.—Imprisonment for life.

1. Substituted for "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, [1][the Sadar-i-Riyasat] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of imprisonment for life.

55. In every case in which sentence of imprisonment for life shall have been passed, [1][the Sadar-i-Riyasat] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Omitted.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

58. Omitted.

59. Omitted.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of [1][the State] until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against [2][the Government] is liable to forfeiture of all his property. After the sentence, and whilst the same

1. Substituted *vide* Act X of 2010 for "His Highness the Maharaja Bahadur".
2. Substituted *vide* Act X of 2010 for "His Highness".

is in force, A's father dies, leaving an estate which but for the forfeiture, would become the property of A. The estate becomes the property of [1][the Government].

Forfeiture of property, in respect of offenders punishable with death, imprisonment for life or imprisonment for 7 years or more.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property movable or immovable shall be forefeited to [1][the Government]; and whenever any person shall be convicted of any offence for which he shall be imprisoned for life or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents or profits of all his movable and immovable estate during the period of his imprisonment, shall be forfeited to [1][the Government] subject to such provisions for his family and dependants as [1][the Government] may think fit to allow during such period.

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

1. Substituted *vide* Act X of 2010 for "His Highness".

Description of imprisonment for non-payment of fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Imprisonment for non-payment of fine when offence punishable with fine only.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Imprisonment to terminate on payment of fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of imprisonment on payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment A will be immediately discharged.

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the

death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Limit of punishment of offence made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not

exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

75. Whoever, having been convicted,—

(*a*) by a Court in Jammu and Kashmir State, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(*b*) [1][by a Court in Part A States and States of Ajmer, Coorg or Delhi or in the territories of any Indian State acting under the general or special authority of the Government of India] of an offence which would, if committed in Jammu and Kashmir State, have been punishable under those chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

1. Substituted *vide* A. L. O. 2008 for certain words.

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a*) A, soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence though it may turn out that Z was acting in self defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at a work with a hatchet ; the head flies off and kills a man who is standing by. Here if there was no want of proper caution on the part of A, his act is excuseable and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith or the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

EXPLANATION.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam vessel, suddedly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a child above seven and under twelve of immature understanding.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law : provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take risk of that harm.

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such

fencing may be caused without foul play ; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death done by consent in good faith for person's benefit.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm, which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person : Provided—

Provisos.

FIRST.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

SECONDLY.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt ; or the curing of any grievous disease or infirmity ;

THIRDLY.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

FOURTHLY.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his childs consent, has his child cut for the stone by a surgeon, knowing it to be likely that the

operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear of misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

Consent of insane person.

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or

Consent of child.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit : Provided—

Provisos.

FIRST.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death ;

SECONDLY.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity ;

THIRDLY.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt ;

FOURTHLY.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child intending, in good faith, the child's benefit A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

EXPLANATION.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehen-

Act to which a person is compelled by threats.

sion that instant death to that person will otherwise be the consequence : Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

EXPLANATION 1. — A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

EXPLANATION 2. — A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law ; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

Of the Right of Private Defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Things done in private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

Right of private defence of the body and of property.

FIRST.—His own body, and the body of any other person, against any offence affecting the human body ;

SECONDLY. — The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. When an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act or by reason of any misconception on the part of that person,

Right of private defence against the act of a person of unsound mind, etc.

every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z under the influence of madenss, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A: Here Z by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

EXPLANATION 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

EXPLANATION 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

When the right of private defenee of the body extcnds to causing death.

FIRST.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

SECONDLY.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the con sequence of such assault ;

THIRDLY.—An assault with the intention of committing rape ;

FOURTHLY.—An assault with the intention of gratifying unnatural lust ;

FIFTHLY.—An rssault with the intention of kidnapping or abducting ;

SIXTHLY.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the rigth of private defence of the body.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong doer, if the offence, the committing of which, or the attempting to commit which occasions the exercise of

When the right of private defence of property extends to causing death.

the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

FIRST.—Robbery ;

SECONDLY.—House breaking by night ;

THIRDLY.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property ;

FOURTHLY.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105 The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restrain or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

107. A person abets the doing of a thing, who—

Abetment of a thing.

FIRST.—Instigates any person to do that thing; or

SECONDLY.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

THIRDLY.—Intentionally aids, by any act or illegal omission, the doing of that thing.

EXPLANATION 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

EXPLANATION 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if cmomitted by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Abettor.

EXPLANATION 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

EXPLANATION 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

EXPLANATION 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of commiting an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft and is liable to the same punishment as if B had committed theft.

EXPLANATION 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly, instigates C to murder Z, and C commits that offence in consequence of B's instigation, B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

EXPLANATION 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

108-A. A person abets an offence within the meaning of this Code who, in Jammu and Kashmir State, abets the commission of any act without and beyond Jammu and Kashmir State which would constitute an offence if committed in Jammu and Kashmir State.

Abetment in Jammu and Kashmir State of offences outside the State.

Illustration.

A, in Jammu and Kashmir State, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

EXPLANATION.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official function. B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Punishment of abetment if person abetted does act with different intention from that of abettor.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which consituted the abetment.

Liability of abettor when one act abetted and different act done.

Proviso.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here if that murder was the probable consequence of the abetment A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant, B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of he abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

115. Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be

Abetment of offence punishable with death or imprisonment for life—if offence not committed.

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

Abetment of offence punishable with imprisonment—if offence be not committed;

if abettor or person abetted be a public servant whose duty it is to prevent offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting commission of offence by the public or by more than ten persons.

Illustration.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life,

Concealing design to commit offence punishable with death or imprisonment for life—

voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

if offence be committed; if offence be not committed.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If offence be committed;

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc;

or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

if offence be not committed.

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

Concealing design to commit offence punishable with imprisonment—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed;

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

if offence be not committed.

CHAPTER V-A.

CRIMINAL CONSPIRACY.

120-A. When two or more persons agree to do, or cause to be done, –

Definition of criminal conspiracy.

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy:

Provided that, no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

EXPLANATION.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Punishment of criminal conspiracy.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine, or with both.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against [1][the Sadar-i-Riyasat, the Government] or the [2][Government of India,] or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall forfeit all his property.

Waging or attempting to wage war or abetting waging of war against the Sadar-i-Riyasat, the Government or the Government of India.

Illustrations.

(*a*) A joins an insurrection against [1][the Sadar-i-Rayasat, the Government] or the [2][Government of India] A has committed the offence defined in this section.

1. Substituted *vide* Act X of 2010 for "His Highness."
2. Substituted *vide* A. L. O. 2008 for "King".

(*b*) A in Poonch abets an insurrection against the Government by sending arms to the insurgents. A is guilty of abetting the waging of war against [1][the Government].

121-A. Whoever within or without Jammu and Kashmir State [2][or India] conspires to commit any of the offences punishable by section 121, [3][x x x x x] or conspires to overawe, by means of criminal force or the show of criminal force, the Government or Government of India or [4][Government of a State within Indian Union], shall be punished with imprisonment for life or any shorter term, or with imprisonment of either description which may extend to ten years and shall forfeit all his property.

Conspiracy to commit offences punishable by section 121.

EXPLANATION.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against [5][the Sadar-i-Riyasat, the Government] or the [6][the Government of India], shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Collecting arms, etc., with intention of waging war against the Sadar-i-Riyasat, the Government or the Government of India.

123. Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against [5][the Sadar-i-Riyasat, the Government] or the [6][Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Concealing with intent to facilitate design to wage war.

1. Substituted *vide* Act X of 2010 for "His Highness".
2. Substituted *vide* A. L. O. 2008 for "or British India"
3. Words " or to deprive His Highness or the Government of India the sovereignty of Jammu and Kashmir State or of India or of any part thereof" omitted *vide* Act X of 2010 (For earlier amendment see A. L. O. 2008).
4. Substituted *vide* A. L. O. 2008 for "any local Government".
5. Substituted *vide* Act X of 2010 for "His Highness".
6. Substituted *vide* A. L. O. 2008 for "King."

124. Whoever, with the intention of inducing or compelling the Ministers of the Government, [1][x x x] to exercise or refrain from exercising in any manner any of the lawful powers of such Ministers [2][x x x] assaults or wrongfully restrains, or attempts to restrain, or overawe, by means of criminal force, or the show of criminal force, or attempts to so overawe such Ministers [2][x x x x] shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Assaulting Ministers of the Government with intent to compel or restrain the exercise of any lawful power.

[3]**124-A.** Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise brings or attemps to bring into hatred or contempt, or excites or attempts to excite disaffection towards [4][x x x x] [5][the Sadar-i-Riyasat] or the Government established by law in [6][India] or in Jammu and Kashmir State, shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Sedition.

EXPLANATION 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

EXPLANATION 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

EXPLANATION 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the [7][Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with imprison-

Waging war against any Asiatic Power in alliance with the Government of India.

1. Words "or the Governor of any province" omitted *vide* Act X of 2010.
2. Words "or Governor" omitted *vide* Act X of 2010.
3. For special procedure for trial of offences under this section see Notification No. 13-L/88 (as amended by Act No. X of 1995) and Notification No. 14-L/88 (Editor).
4. Words "His Majesty or" omitted *vide* A. L. O. 2008.
5. Substituted *vide* Act X of 2010 for "His Highness".
6. Substituted *vide* A. L. O. 2008 for "British India".
7. Substituted *vide* A. L. O. 2008 for "King"

ment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Committing depredation on territories of Power at peace with the Government of India.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the [1][Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war to escape.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escap-

1. Substituted *vide* A. L. O. 2008 for "King".

ed from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION.— A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in Jammu and Kashmir State, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

———

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY.

131. Whoever abets the committing of mutiny by an officer or soldier in [1][the Army] or attempts to seduce any such officer or soldier, from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting mutiny, or attempting to seduce a soldier from his duty.

132. Whoever abets the committing of mutiny by an officer or soldier, in [1][the Army] shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

133. Whoever abets an assault by an officer or soldier in [1][the Army] on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier on his superior officer, when in execution of his office.

134. Whoever abets an assault by an officer or soldier, in [1][the Army] on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with

Abetment of such assault, if the assult is committed.

1. Substituted *vide* Act X of 2010 for "the Army of His Highness".

imprisonment of either description for a term which may extend to seven years, and shall alo be liable to fine.

Abetment of desertion of soldier.

135. Whoever abets the desertion of any officer or soldier in [1][the Army] shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Harbouring deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer or soldier in [1][the Army] has deserted, harbours such officer or soldier, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

EXCEPTION.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Omitted.

Abetment of act of insubordination by soldier.

138. Whoever abets what he knows to be an act of insubordination by an officer or soldier in [1][the Army] shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138-A. Omitted.

139. Omitted.

Wearing garb or carrying token used by soldier.

140. Whoever, not being a soldier in [2][the Indian Military service] wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

---

1. Substituted *vide* Act X of 2010 for "the Army of His Highness".
2. Substituted *vide* Act X of 2010 for " the Military service of His Highness."

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

FIRST.—To overawe by criminal force, or show of criminal force, the Government or any public servant in the exercise of the lawful power of such public servant ; or

SECOND.—To resist the execution of any law, or of any legal process; or

THIRD.—To commit any mischief or criminal trespass, or other offence ; or

FOURTH.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incroporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

FIFTH.—By means of criminal force, or show of criminal force, to compel any person to do what he is not lgally bound to do, or to omit to do what he is legally entitledot to do.

EXPLANATION.—An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining unlawful assembly armedwith deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Rioting armed with deadly weapon.

149. If an offence is commited by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Whoever hires or engages, or employs, or promotes or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring or conniving at hiring, of persons to join unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

EXPLANATION.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to four years or with fine, or with both.

Assaulting or obstructing public servant when suppressing riot, etc.

153. Whoever maliginantly, or wantonly, by doing any thing which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Wantonly giving provocation with intent to cause riot.—

if rioting be committed;

if not committed.

[1]**153-A** Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes [2][of the citizens of India or of the State], shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Promoting enmity between classes.

1. For special procedure for trial of offences under this section see Notification No. 13-L/88 as amended by Notification *No.* 14-L/88 and Act No. X of 1995 (Editor.).
2. Substituted *vide* A. L. O. 2008 for the words "of His Majesty or His Highness' subjects" (words "of His Majesty or" were added by notification No. 4-L/1918).

EXPLANATION.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes [1][of the citizens of India or of the State.]

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of person for whose benefit riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or

1 Substituted *vide* A. L. .O 2008 for "His Majesty or His Highness' subjects."

who has accepted or derived any benefit therefrom,

the agent or manager, of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot;

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

Punishment for committing affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

———

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of [1][the State] or with any public servant, as such, shall be punished with imprisonment of either discription for a term which may extend to three years, or with fine, or with both.

EXPLANATIONS.— "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a munsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to

1. Substituted *vide* Act X of 2010 for "His Highness".

render any particular service to that Power with the [1][x x x] Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking gratifications in order, by corrupt or illegal means to influence public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of [2][the State] or with any public servant, as such, shall be punished with imprisonment of either description, for a term which may extend to three years, or with fine or with both.

Taking gratification for exercise of personal influence with public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of [2][the State] or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge, a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not

1. Word "British" omitted *vide* Act X of 2010.
2. Substituted *vide* Act X of 2010 for "His Highness".

within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of offences defined in section 162 or 163.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term whcih may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining valuable thing without consideration, from person concerned in proceeding or business transacted by such public servant.

165. Whoever being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person any valuable thing without consideration, or for a consideration which he knows to be inadequcate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience cause injury to any person, shall be punished with simple, imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and

Personating a public servant.

in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to one year, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

——

CHAPTER IX-A.

OF OFFENCES RELATING TO ELECTIONS.

"Candidate," "electoral right" defined.

171-A. For the purposes of this Chapter—

(*a*) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat: provided that he is subsequently nominated as a candidate at such election;

(*b*) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Bribery.

171-B. (1) Whoever—

(*i*) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(*ii*) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that, a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification, shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

Undue influence at elections.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(*a*) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interefre with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1)

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Personation at elections.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Punishment for bribery.

Provided that, bribery by treating shall be punished with fine only.

EXPLANATION.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment or provision.

171-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for undue influence or personation at an election.

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, shall be punished with fine.

False statement in connection with an election.

171-H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Illegal payments in connection with an election.

Provided that, if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with a election fails to keep such accounts, shall be punished with fine which may extend to five hundred rupees.

Failure to keep election accounts.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public

servant legally competent, as such public servant, to issue the same,

ntentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A, being legally bound to appear before the High Court of Judicature, Jammu and Kashmir State, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a Sub-Judge, as a witness, in obedience to a summons issued by that Sub-Judge, intentionally omits to appear. A has committed the offence defined in this section.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both;

Omission to produce document to public servant by person legally bound to produce it.

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

'A, being legally bound to produce a document before a [1][District Court,] intentionally omits to produce the same. A has committed the offence defined in this section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at

Omission to give notice or information to public servant by person legally bound to give it.

1. Substituted *vide* A. L. O. 2008 for "Zila Court".

the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

EXPLANATION.—In section 176 and in this section the word "offence" includes any act committed at any place out of Jammu and Kashmir State which, if committed in Jammu and Kashmir State, would be punishable under any of the following sections, namely, 302, 304, 382, 392,

393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer public servant authorised to question.

179. Whoever, being legally bound to state the truth, on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

181. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or beleives to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False information with intent to cause public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a police-man that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Resistance to the taking of property by lawful authority of public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bonnd by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such damand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to order duly promulgated by public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished-

with simple imprisnoment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

EXPLANATION.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustartion.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Whoever holds out any threat of injury to any public servant or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public funtions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term wich may extend to one year, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

[1][**190-A.** (1) Whoever publisehs, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to the Government under any law for the time

Dssemination of contents of presc ibed documents.

1. Seotion 190-A added *vide* Act I of 1993.

being in force shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No Court shall take cognizance of an offence punishable under this section unless the Prime Minister has certified that the passage published, circulated or repeated contains, in the opinion of the Prime Minister, seditious or other matter of the nature referred to in sub-section (1) of section 99-A of the Code of Criminal Procedure, or sub-section (1) of section 10 of the Jammu and Kashmir State Press and Publications Act No. 1 of 1989.]

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence

191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

EXPLANATION 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

EXPLANATION 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by on oath to state the truth, states that he believes a certain signature to be the hand-writing of Z, when he does not believe it to be the hand-writing of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's hand-writing, states that he believes a certain signature to be the hand-writing of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the hand-writing of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a lettter in imitation of Z's hand-writing, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

EXPLANATION 1.—A trial before a Court-martial is a judicial proceeding.

EXPLANATION 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z, ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

EXPLANATION 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in enquiry before an officer deputed by a Court of Justice to assertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry in a stage of a Judicial proceeding, A has given false evidence.

Giving or fabricating false evidence with intent to procure conviction of capital offence;

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing is to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law of Jammu and Kashmir State, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liabel to fine;

If innocent person be thereby convicted and executed.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence, shall be punished either with death or the punishment hereinbefore described.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law of Jammu and Kashmir State, is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such imprisonment, with or without fine.

Using evidence known to be false.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Issuing or signing false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration knowing it to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

EXPLANATION.— A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

Causing disappearance of evidence of offence, or giving false information to screen offender—

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with imprisonment for life;

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

if punishable with less than ten years' imprisonment.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Intentional omission to give information of offence by person bound to inform.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of

Giving false information respecting an offence committed

either description for a term which may extend to one year, or with fine, or with both.

EXPLANATION.—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out o Jammu and Kashmir State which, if committed in Jammu and Kashmir State, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

False personation for purpose of act or proceeding in suit or prosecution.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to [1][three years], or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of

1. Substituted for "one year" *vide* Notification No. 6-L/ 1980 dated 12th March, 1924 Government Gazette dated 12th Chet, 1980).

a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulently suffering decree for sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him, for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claims which he knows to be false, shall be

punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Fraudulently obtaining decree for sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either discription for a term which may extend to seven years, and shall also be liable to fine.

Harbouring offender—

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of Jammu and Kashmir State, which if committed in Jammu and Kashmir State, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Jammu and Kashmir State.

EXCEPTION.—This provision shall not extend to any case in which the harbour or concealment is either by the husband or wife, or by father or mother to his daughter or son, or by son or daughter to his father or mother of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Taking gift, etc., to screen an offender from punishment—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to four years and shall also be liable to fine;

if a capital offence;

and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either discription for a term which may extend to three years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which

may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Offering gift or restoration of property in consideration of screening offender—

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to four years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

EXCEPTION.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Illustrations. Repealed.

Taking gift to help to recover stolen property, etc.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring offender who has escaped from custody or whose apprehension has been ordered—

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life or with imprisonment.

if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of Jammu and Kashmir State which if he had been guilty of it in Jammu and Kashmir State, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in Jammu and Kashmir State; and every such act or ommission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Jammu and Kashmir State.

EXCEPTION.—This provision does not extend to the case in which the harbour or concealment is either by the husband or wife, or the father or mother, or by son or daughter, of the person to be apprehended.

Penalty for harbouring robbers or dacoits.

216-A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for

a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without Jammu and Kashmir State.

EXCEPTION.—This provision does not extend to the case in which the harbour is either by the husband or wife or by the mother or father, or by son or daughter, of the offender.

Definition of "harbour" in sections 212, 216 and 216-A.

216-B. In sections 212, 216 and 216-A the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or the assisting a person in any way to evade apprehension.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself a such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be, contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report etc., contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that it to say :—

Intentional omission to apprehend on the part of public servant bound to apprehend.

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death, or imprisonment for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to one year, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person,

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

EXPLANATION.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended. or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

225-A. Whoever, being a public servant legally bo und as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished —

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

(*b*) if he does so negligently, with simple imprisonment

for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

225-B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue or any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

226. Omitted.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation of a juror or assessor

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned. empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which extend to two years, or with fine, or with both.

CHAPTFR XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin.

[1][Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which had been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the company's rupee is [2][Indian coin.]

(*e*) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is [2][Indian coin] although it is no longer so used.

Counterfeiting coin.

231. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting Indian coin.

232. Whoever counterfeits or knowingly performs any part of the process of counterfeiting the [2][Indian coin] shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Second paragraph of section 230 substituted *vide* A. L. O. 2008.
2. Substituted *vide* A.L.O. 2008 for "King's coin".

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting [1][Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Indian coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Possession of instrument or material for the purpose of using the same for counterfeiting coin;

and if the coin to be counterfeited is [1][Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If Indian coin.

236. Whoever, being within Jammu and Kashmir State, abets the counterfeiting of coin out of Jammu and Kashmir State, shall be punished in the same manner as if he abetted the counterfeiting of such coin within Jammu and Kashmir State.

Abetting in the State counterfeiting out of the State of coin.

237. Whoever imports into Jammu and Kashmir State, or exports therefrom, any counterfeit coin, knowingly or having reason to believe that the same is counterfeit, shall be

Import or export of counterfeit coin.

1. Substituted *vide* A.L.O. 2008 for "King's coin".

punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit of Indian coin.

238. Whoever imports into Jammu and Kashmir State, or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of [1][Indian coin], shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Indian coin, possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin, which is a counterfeit of [1][Indian coin] and which, at the time when he became possessed of it, he knew to be a counterfeit of [1][Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin as genuine which, when first possessed the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

1. Substituted *vide* A. L. O. 2008 for "Kings coin".

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of [1][Indian coin] having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Omitted.

245. Omitted.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

EXPLANATION.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

1. Substituted *vide* A.L.O. 2008 for "King's coin".

Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.

247. Whoever fraudulently or dishonestly performs on [1][any Indian coin] any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of Indian coin with intent that it shall pass as coin of different description.

249. Whoever performs on [1][any Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Indian coin possessed with knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it,

1. Substituted *vide* A.L.O. 2008 for "any of the King's coin".

frauduletnly or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Indian coin by person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government [1][x x x x] for the purpose of revenue, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Government stamp.

EXPLANATION.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the prupose of counterfeiting any stamp issued by Government [1][x x x x] for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of instrument or material for counterfeiting Government stamp.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government [1][x x x x] for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government [1][x x x x] for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government [1][x x x x] for the purpose of revenue, intending to use, or dispose of the same as a genuine

Having possession of counterfeit Government stamp.

1. Words "or by His Highness" omitted *vide* Act X of 2010.

stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Governme t [1][x x x] for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Whoever, fraudulently or with intent to cause loss to the Government [2][x x x x] removes or effaces from any substance, bearing any stamp issued by Government [1][x x x x] for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using Government stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to the Government [2][x x x x], uses for any purpose a stamp issued by Government [1][x x x x] for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government [2][x x x x] erases or removes from a stamp issued by Government [1][x x x x] for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or

1. Words "or by His Highness" omitted *vide* Act X of 2010.
2. Words "or to His Highness" omitted *vide* Act X of 2010.

disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263-A. (1) Whoever—

Prohibition of fictitious stamps.

(*a*) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorised by law to administer executive government in any part of India, and also in any part of His Majesty's dominions or in any foregin country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weight or measure.

CHAPTER XIV.

OF OFFENCES AFFECTIG THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment

Negligent act likely to spread infection of disease dangerous to life.

of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it

to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

276. Whoever knowingly sells, or of fers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Fouling water of public spring or reservoir.

277. Whoever voluntarilycorrupts or foulsir the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to two months, or with fine which may extend to five hundred rupees, or with both.

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to fifteen rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of vessel.

281. Omitted.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conveying person by water for hire in unsafe or overloaded vessel.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Danger or obstruction in public way or line of navigation.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to fire or combustible matter.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286 Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to machinery.

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such orders with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to pulling down or repairing buildings.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

[1[**291-A.** Whoever voluntarily obstructs any person from using the water of any well, tank or other source of water supply which is of a public nature and over which no person or class of persons has any exclusive right of ownership or enjoyment shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.]

Punishment for wrongful obstruction to the use of public tanks, wells, etc.

2[**292.** Whoever—

(*a*) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(*b*) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or

Sale, etc., of obscene books, etc.

1. Section 291-added *vide* Act IX of 1996.
2. Section 292 substituted *vide* Notification No. 16-L of 1983 publishedin Government Gazette dated 29th Bhadon, 1983.

publicly exhibited or in any manner put into circulation, or

(*c*) takes part in or receives profits from any business in course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(*d*) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(*e*) offers or attempts to do any act whch is an offence under this section,

shall be punished with imprisonment of ieither description for a term which may extend to three months, or with fine, or with both.

EXCEPTION.—This section does not extend to any book, pamphlet, writing, drawing or painting, kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple or in any car used for the conveyance of idols, or kept or used for any religious purpose.]

[1][**293.** Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Sale, etc., of obscene objects to young person.

Obscene acts and songs.

294. Whoever, to the annoyance of others,

(*a*) does any obscene act in any public place, or

(*b*) sings, recites or utters any obscene songs, ballad or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to two months, or with fine, or with both.

Keeping lottery office.

294-A. Whoever keeps any office or place for the purpose of drawing any lottery not authorised by Government, shall be punished with

1. Section 293 substituted *vide* Notification No. 16-L of 1983, published in Government Gazette dated 29th Bhadon, 1983.

imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure, in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling place of worship, with intent to insult the religion of any class

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

[1][**295-A.** Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of State Subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religous beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Trespassing on burial-places, etc.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded,

1. Added *vide* Act II of 1989.

or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Uttering words, etc., with deliberate intent to wound religious feelings.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Voluntarily slaughtering or killing cow or the like animals.

298-A. Whoever voluntarily slaughters or kills any bovine animal [1][whether domesticated or wild], such as an ox, bull, cow or calf, shall be punished with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

[1][EXPLANATION.—The expression "bovine animal" does not include a *Gond*.]

Keeping in possession flesh of killed or slaughtered animals as mentioned in S. 298-A,

298-B. Whoever keeps in his possession flesh of any slaughtered animal mentioned in section 298-A above, knowing it or having reasons to believe that the flesh is of such an animal, shall be punished with imprisonment of either description for a term which may extend to one year and shall also be liable to fine which may extend to five hundred rupees.

Killing or slaughtering he or she buffallo.

298-C. Whoever voluntarily slaughters or kills any he or she buffalo shall be punished with fine which may extend to five times the price of the animal killed or slaughtered as determined by the Court.

1. In section 298-A "whether domesticated or wild" added and Explanation substituted *vide* Notification No. 8-A/L-84 published in Government Gazette dated 6th Assuj, 1984.

298-D. Whoever—

(*a*) sells or has in his possession any untanned hide or meat or flesh of a *Gond*, or

(*b*) brings into or has in his possession, within any town the carcass of a *Gond*,

shall be punished with imprisonment of either descripton for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

EXPLANATION.—The word "town" for the purposes of clause (b) means a town or a locality which for the time being, is the headquarters of a Tehsil.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of offences affecting Life.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby casuing death, or with the knowlede that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicde.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death in iuces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

EXPLANATION 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily intirmity and thereby accelerates the death of that other, shall be deemed to have caused his death.

EXPLANATION 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to

have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

EXPLANATION 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though, the child may not have breathed or been completely born.

Murder.

300. Except in the cases herinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

SECONDLY.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

THIRDLY.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

FOURTHLY.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

EXCEPTION 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden prov-

cation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

FIRST.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

SECONDLY.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

THIRDLY.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

EXPLANATION.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merly culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage and to cause him to kill Z puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

EXCEPTION 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and

without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

EXCEPTION 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

EXCEPTION 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

EXPLANATION.—It is immaterial in such cases which party offers the provocation or commits the first assault.

EXCEPTION 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death ; A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable hemicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Culpable homicide by causing death of person other than person whose death was intended.

302. Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Punishment for murder.

303. Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

Punishment for murder by life convict.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to twelve years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Punishment for culpable homicide not amounting to murder.

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

304-A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Causing death by negligence.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding twelve years, and shall also be liable to fine.

Abetment of suicide of child or insane person.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of suicide.

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to

Attempt to murder.

imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Attempts by life-convicts.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(*d*) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308 Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to six years, or with fine, or with both.

Attempt to commit culpable homicide.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309 Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Attempt to commit suicide.

310. Omitted.

311. Omitted.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—A woman who causes herself to miscarry, is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent.

and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

EXPLANATION.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent child being born alive or to cause it to die after birth

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being borne alive, or causes it to die after its birth, shall, if such

act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Causing death of quick unborn child by act amounting to culpable homicide.

316. Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die ; but the death of an urborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of child under twelve years, by parent or person having care of it.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

EXPLANATION.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Hurt.

Hurt.

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. The following kinds of hurt only are designated as "grievous" :—

Grievous hurt.

FIRST.—Emasculation.

SECONDLY.—Permanent privation of the sight of either eye.

THIRDLY.—Permanent privation of the hearing of either ear.

FOURTHLY.—Privation of any member or joint.

FIFTHLY.—Destruction or permanent impairing of the powers of any member or joint.

SIXTHLY.—Permanent disfiguration of the head or face.

SEVENTHLY.—Fracture or dislocation of a bone or tooth.

EIGHTHLY.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Voluntarily causing grievous hurt.

EXPLANATION.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

327. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in

such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, etc., with intent to commit an offence.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for the term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession or to compel restoration of property.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a*) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing grievous hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

EXPLANATION.—The last two sections are subject to the same provisos as Exception 1, section 300.

Act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

EXCEPTION.—The obstruction of a private way over land or water which a person in good faith believes thimself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is hereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Wrongful confinement.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfuly confines Z.

(*b*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful restraint.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either descripton for a term which may extend to three

Wrongful confinement for three or more days.

years, or with fine, or with both.

344. Omitted.

Wrongful confinement of person for whose liberation writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement to extort property or constrain to illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession or compel restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of

any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling : Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

FIRST.—By his own bodily power.

SECONDLY.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

THIRDLY.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force t

Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A intending to rob Z, seizes the pole, and stops the palanqniu. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z and if he did so without Z's consent intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Assault.

EXPLANATION. Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that

he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating". Here though the words used by A could in no case amount to an assault and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

EXPLANATION.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or criminal force to deter public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging dis duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

EXPLANATION.—The last section is subject to the same explanation as section 352.

Assault or criminal force on grave provocation.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping is of two kinds: kidnapping from Jammu and Kashmir State and kidnapping from lawful guardianship.

Kidnapping.

360. Whoever conveys any person beyond the limits of Jammu and Kashmir State without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Jammu and Kashmir State.

Kidnapping from Jammu and Kashmir State.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

EXPLANATION.— The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

EXCEPTION.— This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

363. Whoever kidnaps any person from Jammu and Kashmir State or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to [1][seven years], and shall also be liable to fine.

Punishment for kidnapping.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

Illustrations.

(*a*) A kindnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven

Kidnapping or abducting with intent secretly and wrongfully to confine person.

1. Substituted for "three years" as per Notification No. 13-L/83 dated 30th August, 1926. Government Gazette No. 22 of 1983 (Assuj).

years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

[1][and whoever by means of criminal intimidation as defined in this Code, or of abuse of authority, or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, shall also be punishable as aforesaid.]

[1][**366-A**. Whoever by any means whatsoever induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

Importation of girl from outside the State.

[2][**366-B**. Whoever imports into the State from any place outside the Jammu and Kashmir State, any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment of either description which may extend to ten years and shall also be liable to fine.]

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural

1. Para to section 366 and section 366-A added *vide* Notification No. 13-L/83 dated 20th August, 1926, published in the Government Gazette No. 22 of 1983 (Assuj).
2. Section 366-B added *vide* Act VIII of 1989.

lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement kidnapped or abducted person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life or, with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling person for purposes of prostitution, etc.

372. Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution

1. Words in sections 372 and 373 substituted *vide* Notification No. 13-L/83 dated 30th August, 1926; published in the Government Gazette No. 22 of 1983 (Assuj).

or illicit intercourse with any person, or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION 1. - When any person under the age of [1][eighteen] is sold, let for higher, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such person shall, until the contrary is proved, be presumed to have disposed of such person with the intent that such person shall be used for the purpose of prostitution.

[1][EXPLANATION 2. For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong, or when they belong to different communities, of both such communities as constituting between them a *quasi-marital* relation.]

Buying persons for purposes of prostitution, etc.

373. Whoever buys, hires or otherwise obtains possession of any [2][person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

EXPLANATION 1.—Any prostitute or any person keeping or managing a brothel, who buys, hires, or otherwise obtains possession of any person under the age of [3][eighteen,] shall until the contrary is proved, be presumed to have obtained possession of that person with the intent that such person shall be used for the purpose of prostitution.

[3][EXPLANATION 2.—"Illicit intercourse" has the same meaning as in section 372].

1. Substituted for "sixteen" and Explanation 2 substituted *vide* Notification No. 13-L/83 published in the Government Gazette dated 29th Bhadon, 1983.
2. See footnote under section 372.
3. In section 373 substituted for "sixteen" and Explanation 2 added *vide* Notification No. 13-L/83 published in Government Gazette dated 29th Bhadon. 1983.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Unlawful compulsory labour.

Of Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

Rape.

FIRST.—Against her will,

SECONDLY.—Without her consent.

THIRDLY.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

FOURTHLY.—With her consent, when the man knows that he is not husband, and that her consent is given because she believes that he is another man to whom she is or believes hersels to be lawfully married.

FIFTHLY.—With or without her consent, when she is under [1][fourteen] years of age.

EXPLANATION.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

EXCEPTION.—Sexual intercourse by a man with his own wife. the wife not being under [2][fourteen] years of age, is not rape.

376. Whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, [3][unless the woman raped is his own wife and is not under twelve years of age in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both].

Punishment for rape.

1. Substituted for "twelve" *vide* Notification No. 13-L/83 published in the Government Gazette dated 29th Bhadon, 1983.
2. Substituted for "thirteen" *vide* Notification No. 5 L-/86 dated 16th August, 1929, published in the Government Gazette dated 14th Bhadon, 1989. (For earlier amendment see Notification No. 13-L/83).
3. Added *vide* Notification No. 13-L/83 of 30th August 1926, Government Gazette No. 22 of 1983.

Of Unnatural offences.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

of Theft.

Theft.

378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

EXPLANATION 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

EXPLANATION 2.—A moving effected by the same act which effects the severence may be a theft.

EXPLANATION 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

EXPLANATION 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

EXPLANATION 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express ro implied,

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high-road, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains

money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Theft in dwelling house, etc.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to six years, and shall also be liable to fine.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of

property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion"

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years. or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable te fine.

Extortion by putting a person in fear of death or grievous hurt.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fe ar of death or of grievous hurt, in order to commit extortion.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be dunished with imprisonment of either pescription for a term which may extend to ten years, and shall also be liable to fine ; and, if the offence be one punishable under section 377 of this Code. may be punised with imprisonment for life.

Extortion by threat of accusation of an offence punishable with death, etc.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend ten years, and shall also be liable to fine ; and if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Putting person in fear of accusation of offence in order to commit extortion.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or of instant hurt or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

EXPLANATION.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high road shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such : but it is not robbery, unless Z is put in fear of the instant death of his child.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons,

present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of dacoits.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

Of Criminal Misappropriation of Property.

403. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake

dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

EXPLANATION 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

EXPLANATION 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it : it is sufficient if, at the time of appropriating it, he doos not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a rupee on the high-road. not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates

the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs ; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonesty misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed ciriminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has commited crimir al breach of trust.

(*f*) A, a carrier, is entrusted by Z with propeity to be carried by land or by water. A dishonestly misappropriates the property. A has committee criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, etc.

407 Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409 Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent,

commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

Of the receiving of Stolen Property.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without [1][the State]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Substituted *vide* A. L. O, 2068 for "British India".

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assisting in concealment of stolen property.

Of Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Cheating.

EXPLANATION.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*) A sells and conveys an estate to B. A, knowing that in consequence of such sale h· has no right to the property, sells or mortgages the same to Z, without disclosing the fa:t of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Cheating by personation.

EXPLANATION.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

418. Whoever cheats with the knowledge that he is likely thereby to cause a wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a

Cheating and dishonestly inducing delivery of property.

valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment or property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Mischief.

EXPLANATION 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

EXPLANATION 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f*) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crops. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

427. Whoever commits mischief and thereby causes loss or damage to the amount of [1][fifty] rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travel-

Mischief by injury to public road, bridge, river or channel.

1. Substituted for "one hundred" *vide* Correction slip published in Government Gazette dated 4th Sawan, 1991.

ing or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischie' by causiug inundation or obstruction to public drainage attended with damage.

433. Omitted.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destory house, etc.

437. Omitted

438. Omitted.

439. Omitted

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

Criminal trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

EXPLANATION.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

House-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Lurking house-trespass.

444. Whoever commits lurking house trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

Lurking house-trespass by night.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in

House-breaking.

the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

FIRST.—If he enters or quits through a passage made by himself or by any abettor of the house-trespass, in order to the committing of the house-trespass.

SECONDLY.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

THIRDLY.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

FOURTHLY.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

FIFTHLY.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

SIXTHLY.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

EXPLANATION.—Any out-house or building occupied with a house and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the doorkeeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house breaking.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to commit offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonmnet for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with imprisonment for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation for hurt, assault or wrongful restraint.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Whoever commits lurking house trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

460. If, at the time of the committing of lurking house-trespass by night or housebreaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open receptacle containing property.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks

open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

Forgery.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

FIRST.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

SECONDLY.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

THIRDLY.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsment into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by forced certificate, and thereby to induce Z to enter into an express or implied contract for service.

EXPLANATION 1. - A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may

be believed that the bill was drawn by another person of the same name. A has committed forgery,

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiates the bill as though it had been accepted by Z. A is guilty of forgery, and if B, knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable, here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

EXPLANATION 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to nagotiate it. A commits forgery.

Punishment for forgery

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Forgery of record of Court or of public register, etc.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceed-

ings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of valuable security, will, etc.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Forgery for purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for purpose of harming reputation.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished, with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Forged document.

470. A false document made wholly or in part by forgery is designated "a forged document".

Using as genuine a forged document.

471. Whoever fraudulently or dishonesly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Making or possessing counterfeit seal, etc., with intent to commit frogery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent has

in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in section 466 or 467 knowing it to be forged and intending to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents described in section 467 or possessing counterfeit marked material.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.

477-A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Falsification of accounts.

EXPLANATION.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Of Trade, Property and Other Marks.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark.

Trade mark.

479. A mark used for denoting that movable property belongs to a particular person is called a property mark.

Property mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false trade mark.

481. Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Using a false property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade mark or property mark.

483. Whoever counterfeits any trade mark or property mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a parti-

Counterfeiting a mark used by a public servant,

cular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they or not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit trade mark or property mark.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall unless he proves –

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not

contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cauce injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Currency-Notes and Bank-Notes.

Counterfeiting currency-notes or bank-notes.

489-A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION.—For the purposes of this section and of sections 489-B, 489-C and 489-D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to or as a substitute for, money.

Using as genuine forged or counterfeit currency-notes or bank-notes.

489-B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or cunterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Possession of forged or counterfeit currency-notes or bank-notes.

489-D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

[1][**489-E** (1) Whoever makes or causes to be made, or uses for any purpose whatsoever or delivers to any person any document purporting to be or in any way resembling or so nearly resembling as to be calculated to deceive any currency note, or banknote, shall be punished with fine which may extend to one hundred rupees

Making or using documents resembling currency notes or bank notes.

(2) If any person whose name appears on a document the making of which is an offence under sub-section (1), refuses without lawful excuse to disclose to a police officer on being so required, the name and address of the person by whom it was printed, or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence uuder sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.]

1. Section 489-E inserted *vide* Act XV of 2005.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Illustrations.

(*a*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A. a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*) A, by unlawful means, compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence

EXPLANATION.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a *dak* company to drive his carriage for a month. B employs the *dak* company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply wants of helpless person.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants,

voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. Whoever, being bound by a lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within the State to which by virtue of the contract he has been or is to be coveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXCEPTION.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

496 Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to four years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

Enticing or taking away or detaining with criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term

which may extend to [1][five years], or with fine, or with both. In such case the woman shall be liable to be punished as an abettor.

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499 Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

EXPLANATION 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

EXPLANATION 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

EXPLANATION 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

EXPLANATION 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

1. Substituted for "two years" *vide* Notification No. 13-L/83 of 30th August, 1926 (Govrnment Gazette No. 22 of 1983).

FIRST EXCEPTION.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of truth which public good requires to be made or published.

SECOND EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of public servants.

THIRD EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, informing or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties in which the public is interested.

FOURTH EXCEPTION.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

EXPLANATION.—A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

FIFTH EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of case decided in Court or conduct of witnesses and others concerned.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this

exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says " I do not believe what Z asserted at that trial because I know him to be a man without veracity". A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

SIXTH EXCEPTION.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public performance.

EXPLANATION.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent, Z must be a man of impure mind". A is within this Exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

SEVENTH EXCEPTION.—It is not defamation in a person having over another any authority; either conferred by law or arising out of a lawful contract made with that other to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his order; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority

is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier - are within this Exception.

EIGHTH EXCEPTION.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accusation preferred in good faith to authorised person.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

NINTH EXCEPTION. It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

Illustrations.

(*a*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the Exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the Exception.

TENTH EXCEPTION.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for

Printing or engraving matter known to be defamatory.

a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

EXPLANATION.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

(*a*) with intent to cause, or which is likely to cause, any officer or soldier in the army [1][of India] or [2][the State

1. Substituted *vide* A. L. O. 2008 for "of his Majesty".
2. Substituted *vide* A. L. O. 2008 for "His Highness".

Army] to mutiny or otherwise disregard or fail in his duty as such; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

EXCEPTION.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing person to believe that he will be rendered an object of Divine displeasure.

508. Whoever, voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempiting to induce

that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender tocause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a*) A sits *dhurna* at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(*b*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such cricumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Word, gesture or act intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which my extend to ten rupees, or with both.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

Punishment for attempting to commit offences punishable with imprisonment for life or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provi-

sion is made by this Code for the punishment of such attempt, be punished with imprisonment for life or imprisonment of any description provided for the offence, for a term of imprisonment for life or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

CHAPTER XXIV.

OF OFFENCES PUNISHABLE WITH WHIPPING.

Whipping under section 53.

512. In accordance with the provisions hereinafter contained the offenders are also liable to the punishment of whipping under section 53 of this Code.

Offences punishable with whipping in lieu of other punishment.

513. Whoever commits any of the following offences, *viz* :—

(*a*) theft as defined in section 378 of this Code, other than theft by a clerk or servant of property in possession of his master :

(*b*) theft in a building, tent or vessel as defined in section 379 of this Code ;

(*c*) theft after preparation for causiug death or hurt as defined in section 382 of this Code ;

(*d*) lurking house-trespass or house-breaking as defined in sections 443 and 445 of this Code in order to the committing of any offience punishable with whipping under this section ;

(*e*) lurking house-trespass or house-breaking by night, as defined in sections 444 and 446 of this Code in order to the committing of any offence punishable with whipping under this section,

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under this Code.

Offence punishable with whipping in lieu of or in addition to other punishment.

514. Whoever —

(*a*) abets, commits or attempts to commit rape as defined in section 375 of of this Code ;

(*b*) compels or induces any person by fear of bodily injury to submit to an unnatural offence, as defined in section 377 of this Code ;

(*c*) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of this Code ;

(*d*) commits dacoity as defined in section 391 of this Code,

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence be liable under this Code.

Juvenile offenders when punishable with whipping.

515. Any juvenile offender who abets, commits, attempts to commit any offence punishable under this Code, except offences specified in Chapter VI and sections 153-A and 505 of this Code and offences punishable with death, may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

EXPLANATION.—In this section the expression "juvenile offender" means an offender whom the Court after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

THE SAPPHIRE ACT, 1989 (1932 A. D.)

Act No. XVI of 1989.

CONTENTS.

Preamble.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Precious stones to be the property of the State.
4. Prohibition as to keeping or retaining in possession, buy-

SECTION.

ing or selling sapphire or ruby within the State after three months from promulgation of this Act.

5. Penalty.

6. Offences cognizable and non-bailable.

7. Officers authorised to prevent commission of offences.

8. Officers authorised to seize sapphire or ruby or detain, search or arrest suspected person when offence committed.

9. Application of Code of Criminal Procedure.

10. Report to Magistrate of seizure of property.

11. Duty of Magistrate.

12. Confiscation of seized sapphires, rubies, weapons, materials, tools, etc.

SECTION.

13 Penalty for vexatious or unreasonable seizure, detention, etc.

14. Person in posse sion of sapphire or ruby within the State at the commencement of this Act to make over such sapphire or ruby to an authorised-officer;

Entitled to 30 per cent. of the value.

5. Value to be determined by Minister-in-charge.

16 Sapphire or ruby to be deemed illicit if not produced as required by section 14.

17. Reward to informer.

18. Report of Mineral Survey officer to be used as evidence.

19. Application of the provision of this Act to any other mineral.

20. Rule making power.

THE SAPPHIRE ACT, 1989 (1932 A. D.)

Act No. XVI of 1989

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Development Department Notification No.* 2, *dated* 10*th October*, 1932. *Published in Government Gazette dated* 12*th Katik*, 1989.]

An Act to Prohibit the unlicensed possession of sapphires and other precious stones within the territories of Jammu and Kashmir State.

WHEREAS it is expedient to prevent theft of precious stones from mines within the State, to prohibit and punish the unlicensed possession thereof and particularly the theft of

stones from the Paddar Mines, transport thereof in the State and export [1][to any place outside the State] by persons not licensed for the purpose; It is hereby commanded as follows :—

1. (i) The Act may be called the Sapphire Act, 1989.

(ii) It shall extend to the whole of the Jammu and Kashmir State.

(iii) It shall come into operation immediately.

Definitions

2. In this Act, unless there is something repugnant to the context, the following words shall have the meanings attached to them:—

(*a*) "precious stone" means corundum sapphire and ruby and includes any other stone which [2][the Government may by a notification in the Government Gazette declare] to be a precious stone for the purposes of this Act;

(*b*) "sapphire or ruby" means sapphire or ruby from the Paddar mines or elsewhere within the State territories, which is in a crude condition, either as more or less complete crystals, such as appear in the pegmatite matrix, or broken fragments as are obtained from the detritus on the hill side;

(*c*) "export" means the taking out of the Jammu and Kashmir State territories to any place outside such territories;

(*d*) "transport" means the removal from one place to another within the territories of the Jammu and Kashmir State;

(*e*) "Minister-in-charge" means a [3][Minister of the Government] for the time being in charge of the Mining and Mineral Survey Department;

(*f*) "vessel" includes any thing for the conveyance of property ;

(*g*) "Magistrate" means a Magistrate of the first or second class or any official or person specially empowered by [4][the Government] to try cases under this Act ;

(*h*) "State territory" means the territory of the Jammu and Kashmir State ;

1. Substituted *vide* A. L. O 2008 for "in the British territory".
2. Substituted *vide* Act X of 1996 for the words "may, by command of His Highness the Maharaja Bahadur and by notification in the Jammu and Kashmir Government Gazette, be declared".
3. Substituted *vide* Act X of 2010 for "Minister of His Highness' Government"
4. In sections 2, 8 and 19 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

(*i*) "Mineral Survey Officer" means and includes the mining officer of the Mineral Survey Department and any other officer of that Department higher in rank or any officer empowered by [1][the Government] by name or by office to carry out all or any of the purposes of this Act;

(*j*) "Police Officer" means and includes all officers of the Police Department of and above the rank of a constable;

(*k*) "Customs and Excise Officer" means and includes every officer of that Department of and above the rank of a jamadar ;

(*l*) "Revenue Officer" means any officer of the Revenue Department of and above the rank of a lambardar ;

(*m*) "Forest Officer" means and includes every officer of that Department of and above the rank of a forest guard;

(*n*) "sapphire offence" means any offence punishable under this Act.

3. All sapphires and rubies and all precious stones as defined above found anywhere within the State territory after three months from the date of the promulgation of this Act shall be deemed to be the property of the State, unless title thereof is vested in any person in accordance with the rules made under this Act.

4. Except as permitted by the Minister-in-charge or under any rules promulgated under this Act, no one shall have, keep or retain in his possession or custody any sapphire or ruby within the State territory after three months from the promulgation of this Act, or buy or sell or be otherwise a party to the transfer of any sapphire or ruby or a precious stone as defined above or transport it or dig, cut or dress it.

5. Whoever does any of the acts prohibited by section 4 above shall, on conviction by a Magistrate, be punishable with imprisonment of either description which may extend to two years or fine which may extend to Rs. 5,000, or both.

6. All offences under this Act shall be cognizable and non-bailable.

7. Every Mineral Survey Officer, Forest Officer, Police Officer, Customs and Excise Officer and Revenue Officer shall

1. See footnote under section 2.

prevent and may interfere for the purpose of preventing the commission of any sapphire offence under this Act.

8. When there is reason to believe that an offence under this Act has been committed, any Mineral Survey Officer or any Forest Officer above the rank of Ranger, or any Police Officer not below the rank of Sub-Inspector or any officer of the Revenue Department not below the rank of Naib-Tehsildar, or any other officer specially authorised by [1][the Government] in this behalf may without an order from a Magistrate and without a warrant —

(*a*) seize any sapphire or ruby, with respect to which offence under this Act is alleged to have been committed, together with all weapons, materials, tools, boats, carts and cattle believed or alleged to have been used in committing such offence ;

(*b*) detain, search or arrest any person against whom a reasonable suspicion exists of his being concerned in any offence under this Act :

Provided that every officer making any arrest under this section shall, without any unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station;

(*c*) detain and search in any open place any cart, car, pack-animal or other conveyance which he has reason to believe to be used for carrying sapphire or ruby in respect of which an offence under this Act has been committed ; and

(*d*) under a warrant issued by a Magistrate to him by name or by virtue of his office enter and search any building, vessel or place in which he has reason to believe sapphire or ruby to be unlawfully kept or concealed and in case of resistance, to break open any door or remove any obstacle to such entry.

9. All warrants issued and all searches made under section 8 shall be executed or made in accordance with the provisions of the Code of Criminal Procedure in force within the State.

10. Every officer seizing any property shall, without any unnecessary delay, make a report of such seizure to the Magistrate; provided that when the offender is unknown it shall be sufficient for the officer to make as soon as possible

1. See footnote under section 2.

a report of the circumstances of such seizure to his immediate superior officer.

11. Upon the receipt of any such report, the Magistrate shall, with all convenient speed take such measures as may be necessary for the arrest or detention and trial of the offender and the disposal of the property according to law.

12. All sapphires or rubies in respect of which an offence under this Act has been committed and all weapons, materials, tools, vessels and cattle used in committing it shall be liable to confiscation and, on the conclusion of the trial or in case of the offender being not known, without any trial shall be made over by the Magistrate to the Minister-in-charge or any officer appointed by him in writing by a particular or general order. Such confiscation shall be in addition to any other punishment prescribed for such an offence.

13. Any officer who vexatiously and without reasonable cause seizes any property, detains or searches any person, animal or conveyance or enters or searches any building, vessel or place without any belief that an offence under this Act has been committed shall be punished with imprisonment of either description which may extend to six months or with fine which may extend to Rs. 500, or with both.

14. Notwithstanding anything stated in this Act, any person who has in his possession or custody any sapphires or rubies within the State territories at the commencement of this Act may make over such sapphires or rubies to the officer duly authorised for such purpose by the Minister-in-charge within three months of the promulgation of this Act and shall be entitled to receive 30 per cent. of the value of such sapphires or rubies unless he can prove a valid title thereto to the satisfaction of the officer appointed by the Minister-in-charge in this behalf, in which case he will be entitled to receive full value of such sapphire or ruby.

No person complying with the provisions of this section shall be liable to prosecution under section 5 and no enquiry shall be made from him as to the source from which he obtained such sapphire or ruby, unless he volunteers to give this information in order to prove valid title to such sapphires or ruby.

15. The value of the sapphires or ruby produced under section 14 by any person shall be determined by the Minister-

in-charge and his assessment shall be final.

16. Any sapphire or ruby not produced as required by the provisions of section 14 within three months of the promulgation of this Act shall be deemed to be illicit.

17. Any person who is not a State official and gives information which leads to the seizure of sapphires or rubies as defined in this Act shall be entitled to a reward not exceeding 30 per cent. of the seized sapphire or ruby as the Minister-in-charge may determine.

18. Any document purporting to be a report under the hand of any Mineral Survey Officer of the State upon any sapphire or ruby duly submitted to him for examination and report in the course of any proceedings under this Act, may be used as evidence in any enquiry, trial or other proceedings under this Act.

19. [1][The Government] may, by a notification printed in the Jammu and Kashmir Government Gazette, apply the provisions of this Act to any mineral other than sapphire or ruby.

20. The Minister-in-charge may make rules consistent with the provisions of this Act for the carrying out of the objects of this Act.

THE WATER MILLS (JANDAR AND GHARAT) ACT, 1989
(1932 A. D.)

Act No. XVII of 1989.

CONTENTS.

Preamble.

SECTION.

CHAPTER I.

PRELIMINARY.

1. Title.
2. Extent.
3. Commencement.
4. Repeal ; savings.
5. Definitions.
6. Revenue officers and their powers.

1. See footnote under section 2.

SECTION.

7. *Jama* on Water Mills.

8. Cases in which assessment to be remitted.

9. Points to be considered when fixing assessment.

10. Returns to be submitted to Commissioner.

11. Omitted.

12. Where land revenue on mill to be remitted.

13. When a mill constructed on State owned land.

14. Water mills subject to law in force regarding land assessed to revenue.

CHAPTER II.

PROCEDURE TO REGULATE THE CONSTRUCTION OF NEW MILLS IN ESTATES OF CLASS (i).

15. Procedure for applying.

16. Duty of Tehsildar.

17. Objections.

18. Tehsildar to permit construction.

19. Applications for change of site.

20. Tehsildar to refer to Collector in doubtful cases.

SECTION.

21. Provisions of Land Revenue Act to apply.

22. Patwari's duty to report.

23. Penalty for construction without permission.

24. Penalty for construction disregarding conditions laid down.

24-A. Procedure where a mill causes erosion of land.

25. *Wasil bagi nawis* to keep register.

CHAPTER III.

RULES RELATING TO MSILLS IN ESTATES OF CLASSES (ii) AND (iii).

26. No previous permission required for construction unless Collector otherwise orders.

27. No new *jama* to be imposed.

28. Procedure ; functions of Patwari and Tehsildar.

29. No register to be maintained with respect to such mills.

CHAPTER IV.

RECORD OF WATER MILLS.

30. How mills to be shown in patwar papers.

31. Mills to be shown in Jamabandi Forms.

THE WATER MILLS (JANDAR AND GHARAT) ACT, 1989
(1932 A. D)

Act No. XVII of 1989.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Prime Minister's endorsement No.* 9367-G. B , *dated* 26*th August*, 1932. *Published in Government Gazette dated* 2*nd Magher*, 1990 (*v*)].

WHEREAS it is expedient to amend the rules relating to Water Mills (Jandar and Gharat); It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Water Mills (Jandar and Gharat) Act No. XVII of 1989.

2. This Act shall extend to the whole of the Jammu and Kashmir State except the following tracts, namely :—

[1][(*a*)] canals and their off-shoots under the Irrigation Branch of the Public Works Department and areas under them;

[1](*b*) any tract, town or part of a town in the State which may be exempted permanently or for some period under [2][Government's] orders notified in the Jammu and Kashmir Government Gazette.

[3][EXPLANATION.—For purposes of [4][clause (a)] the escape water from a canal flowing down into a channel carrying water from a source other than a canal shall not be deemed to be an off-shoot of such canal.]

[5]**3.** This Act shall come into operation from such date as may be fixed by the [6][Government] by notification in the Jammu and Kashmir Government Gazette.

1. In section 2, clauses (c) and (e) renumbered as clauses (a) and (b) respectively *vide* Act IV of 1955. (For earlier amendment see Act X of 2010.)
2. Substituted *vide* Act X of 1996 for "His Highness".
3. Explanation to section 2 inserted *vide* Act XXV of 2007.
4. Substituted *vide* Act IV of 1955 for "clause (c)".
5. The Act came into operation from 2nd Maghar, 1990. (G.G. 25th Magh, 1991.)
6. Substituted *vide* Act X of 1996 for "Revenue Minister".

4. This Act when enforced shall repeal all previous rules and orders relating to water mills; provided that the mills or jandars which have been constructed or erected under the existing rules under orders of a competent authority, or proceedings which are being conducted or have been completed against persons for infringement of the existing rules, shall be deemed to have been respectively constructed, erected, conducted or completed under this Act.

5. In this Act, unless there is something repugnant to the subject or context,— Definitions.

(*a*) the words "water mills" include *jandar*, *gharat* and any other kind of mill worked by water of a river, brook or *zamindari kuhl* (a small water channel).

(*b*) For the purposes of these rules estates are divided into three classes :—

(i) those estates where some or all such mills were separately assesssed at the last Settlement ;

(ii) those estates where mills were not assessed separately, but some portion of the land revenue has been allotted on mills by land-holders at *bachh* ;

(iii) those estates where mills were neither assessed separately nor at *bachh*.

EXPLANATION.—(i) An estate where there were no mills at the time of Settlement will be considered to come under the same class in which the estates of that circle or *Illaqa* have been placed.

(ii) Estates where some of the mills were assessed and others were not assessed at Settlement, and estates where application is made, subsequent to Settlement, for construction of a mill which would have come under assessment, had it existed or been constructed at Settlement, will be considered to come under class (*b*)(i).

Revenue Officers and their powers.

6. [1]Section 6 of the Land Revenue Regulation No. 1 or 1980 deals with different grades of Revenue Officers. For the purposes of this Act officers of the grades mentioned hereinafter in this Act shall exercise their powers vested in them under the Land Revenue Act for discharge of their legitimate duties. [2][x x x x x].

1. Section 6 of Land Revenue Act XII of 1996.
2. Certain words omitted *vide* Act III of 2008.

Jama on Water Mills (Jandar and Gharat).

7. The assessment on mills, whether imposed at Settlement or afterwards, will be treated as part of the *Jama* of the estate and will be subject to the usual cesses. Such assessment would be liable to suspension or remission and alluvion and diluvion in the same manner, and under the same authority as the ordinary land revenue.

8. In estates which come under class (i) of section 5, sub-section (b) of this Act—

(*i*) the assessment on a mill may be permanently or temporarily remitted by orders of the [1][Collector]: provided that the decrease or increase of the sum of assessment of such mills situated in localities falling under Schedule A of Alluvion Diluvion Rules, will be dealt with under rules for alluvion and diluvion with the consent of the Revenue Minister ;

(*ii*) no such assessment should be permanently terminated unless the mill has been dismantled and its gear removed, or it has otherwise been satisfactorily ascertained that the mill has been permanently abandoned.

9. The assessment on mills situated in estates of class (*a*) of section 5 (*b*) and started after Settlement will be fixed by order of the [1][Collector] keeping the following points in view :—

(*i*) if in any estate *jama* has been fixed at Settlement according to classification of mills for an Assessment Circle, the *jama* on new mills should be fixed according to that classification ;

(*ii*) if there exists no such classification or no definite ruling or instruction, then the assessment of new mills in the tract in question should be fixed on the same lines as have been adopted in respect of the assessment imposed on other mills with similar advantages in the same neighbourhood.

Failing these guides, the assessing officer will have regard chiefly to the following points :—

(*a*) situation of the new mill with reference to markets, town, etc ;

(*b*) regularity of supply of grain for milling ;

(*c*) sufficiency or otherwise of the water supply ;

(*d*) number of months during the year when the mill is expected to work ;

1. Substituted *vide* Act III of 2008 for "Governor".

(*e*) output of flour as shown by actual measurement ;
(*f*) dimension and height of the mill-sluice, and any other circumstances bearing on the profits to be expected.

In no case the assessment on a mill should be less than a rupee or in fractions of a rupee.

10. Alterations in the demand due to the assessment of new mills or the abandonment of old ones, will be reported annually to the [1][Commissioner] for information and formal sanction to the alteration of the fixed demand.

These returns will be in Forms A and B appended to this Act and will be submitted yearly at the time of submission of *kistbandi*. In order that these statements may be correctly prepared, the Tehsildar will obtain from each Patwari statements in the same form showing all changes in mills of his *halqa* during the preceding year, and the statements for submission to the [1][Commissioner] will be prepared after comparison with the register kept by the *wasil baqi nawis* under section 25 of this Act :

[2][**11.** Omitted.

12. When a mill is constructed on an area which has already been assessed to land revenue, then in assessing the revenue on the mill, the land revenue on the area should be remitted, provided that the remission so made will be in whole rupees and not in fractions of a rupee.

[3][**13.** (i) Any person constructing a mill under proper authority on a land owned by the State will be granted on mutation sanctioned by the Tehsildar of the tehsil concerned, occupancy rights in the area in which the mill is situated.

(ii) A person starting mill on a land held in proprietary rights by a *zamindar* will be shown in *kasht* column and the revenue chargeable thereon will be shown in the demand column.]

14. The sale and mortgage of proprietary [4][x x x] or occupancy rights with regard to water mills will be subject to the law in force regarding the land assessed to revenue. Such rights will not be liable to sale or attachment in the execution of an order or decree passed by any Court.

---

1. Substituted *vide* Act IV of 1955 for "Revenue Minister"
2. Section 11 omitted *vide ibid*.
3. Section 13 substituted *vide* Act I of 1994.
4. Words "Assamidari, Malgazari" omitted *vide* Act VII of 1995.

CHAPTER II.

PROCEDURE TO REGULATE THE CONSTRUCTION OF NEW MILLS IN ESTATES OF CLASS (i).

15 Any person wishing to start a new mill in an estate of class (i) must apply in writing to the Tehsildar, on one rupee stamp, for permission to do so. The Tehsildar will then order the patwari to prepare *shajra* and *khasra*, and when these papers are received, will record statement of the applicant and issue a notice to all concerned to file their objections within a period to be specified, which shall in no case be less than a month.

The notice will be issued in duplicate, one copy to be posted in a conspicuous place in the estate in which the site of proposed mill is situated; the second copy will be placed on the file with a report of service.

16 After preparation of *shajra* and *khasra* and expiry of the period of notice, the Tehsildar should completely satisfy himself, by personal enquiry on the spot, as to whether the construction of the proposed mill is not in any way detrimental to the interests of the existing mill-owners or the irrigation of land.

Even if no objections have been put in, the Tehsildar should satisfy himself that the water of the *kuhl* out of which the channel to work the mill has been taken out, again rejoins it and does not go away elsewhere.

If it appears that the proposed construction of the mill will be harmful so far as irrigation of land is concerned, the working of the mill should be allowed for a period other than the one when water is required for irrigation purposes. When a channel for the water mill is taken out of a *nallah* wherein exists a trout nursery or where trout is stored for game purposes, the Fish Preservation Department should be consulted before the permission sought for to construct the water mill is granted. Objection, if any, raised by the Fish Preservation Department will be a sufficient justification for rejecting the application.

17. Any person intending to put in his objections should do so in writing on one rupee stamp within the period specified in the notice. Objections put in after that period should generally be rejected unless reasonable ground for the delay caused is shown.

18. If the Tehsildar is satisfied that existing rights are not interfered with and if no objections have been filed or objections filed have been rejected after due enquiry, the Tehsildar will issue orders permitting the applicant to construct the proposed mill. If the proposed mill has not been constructed or started within one year of the date of granting permission, the same will be deemed as cancelled.

19. If the existing site of a mill has become unsuitable owing to flood or diversion of the course of a river or *nallah*, or some other cause, the Tehsildar should, on formal applications received, pass such orders as he deems fit. For change of site two files will have to be prepared, *viz.*, one for relinquishment of the old site and the other for construction of the new mill.

20. If the Tehsildar finds that the proposed mill would be harmful to irrigation or existing water mills [1][or is likely to cause erosion of land] or is otherwise objectionable, he should reject the application. Doubtful cases may, if he deems fit, be referred to the [2][Collector] for instructions.

21. The provisions of [3]sections 11 to 15 of the Jammu and Kashmir Land Revenue Regulation No. 1 of 1980, shall, in so far as they are applicable, apply to the proceedings and orders of Revenue officers under sections 16, 17, 18, 19, 20, 23, 24 and 28 of this Act.

22. As soon as a patwari comes to know at *girdawari* or otherwise that in an estate of class (i) of section 5 (b) a new mill has been constructed or the site of the existing mill has been changed without permission, he should at once submit a report to the Tehsildar.

[4][**23.** (*a*) Any person who is proved to have constructed or changed the existing site of a mill of class (i) of sub-section 5 (b) without proper permission shall be liable under the orders of the [2][Collector] to a fine not exceeding Rs. 50 in each case, in addition to revenue assessed on the mill which shall be realized from the date of construction. The [2][Collector] may, in addition, order, for reasons to be

1. Inserted *vide* Act XXV of 2007.
2. Substituted *vide* Act III of 2008 for "Wazir Wazarat".
3. Sections 11 to 14 of the Jammu and Kashmir Land Revenue Act XII of 1996.
4. Section 23 substituted *vide* Act XIV of 2005.

recorded, that the mill shall be dismantled.

(*b*) The fine not exceeding Rs. 50 imposed on a mill which has been ordered to be dismantled shall be recurring and recoverable monthly until mill continues to exist.]

24. When a mill has been permitted to be constructed subject to certain conditions and it has been found that those conditions have not been adhered to, the [1][Collector] may inflict a fine not exceeding Rs. 10 on the person committing such infringement and may also, if he thinks fit, order that the mill should be stopped.

[2][**24-A.** (*i*) Where a [3][Collector] finds that the water out-going from a mill has caused any erosion of land within the area drained by such water he may require the mill-owner to provide such safeguards and to repair the damage already done in such manner and within such time as he considers necessary. If such mill owner fails to comply with the directions of the [3][Collector] it shall be lawful for the [3][Collector] to order that the mill-channel and the mill shall be stopped within one month of the date of the order passed by him.

(*ii*) If the mill channel or the mill is not stopped within the period prescribed under sub-section (*i*), the mill-owner shall, at the instance of the [3][Collector] be liable to fine not exceeding rupees five per day so long as the disobedience of the order continues.]

25. A register [*in Form C*] of all mills situated in estates of class (*i*) will be maintained by the *wasil baqi nawis* of each Tehsil, and no files relating to such mills shall be consigned to record room without obtaining the certificate of the *wasil baqi nawis* to the effect that *amaldaramad* has been made in his register.

CHAPTER III.

RULES RELATING TO MILLS IN ESTATES OF CLASSES (ii) AND (iii).

26. In estates of classes (ii) and (iii), no previous permission is required for the construction of new mills, unless the

1. Substituted *vide* Act X of 2010 for "Wazir Wazarat".
2. Section 24-A inserted *vide* Act XXV of 2007.
3. Substituted *vide* Act III of 2008 for "Wazir Wazarat".

[1][Collector] having reason to believe that the construction of new mills in any locality is objectionable, has issued orders forbidding their construction without special permission in each case.

27. In estates of classes (ii) and (iii) no new *jama* will be imposed or remitted on construction of new mills or on abandonment of old ones.

28. On construction of a new mill, the patwari should write up mutation at once, and it should be disposed of by the Tehsildar who should satisfy himself that there is no objection. If objections are put in, they should be considered and disposed of as in the case of mills in estate of class (*i*); but no separate file need be prepared, the matter being disposed of in the orders on the mutation. The Tehsildar may, however, if he thinks it necessary in any special case, order that the matter be decided after enquiry on a separate file, the mutation remaining pending meanwhile.

29. No register will be maintained in the Tehsil of mills in estates of classes (*ii*) and (*iii*), and no annual returns will be prepared relating to such mills.

CHAPTER IV

RECORD OF WATER MILLS

30. In the patwar papers, all mills in estates of classes (*i*), (*ii*) and (*iii*) as described under Chapters II and III will be shown as follows :—

(*a*) each mill will be shown by the patwari under a separate Field No. in the *khasra girdawari*, and in the column "for changes" he will note at every harvest whether the mill is in working order or not; changes in the owner, [2][x x] or occupancy tenant of the mill will also be shown as usual in this column;

(*b*) mills, of which the site does not change, will be entered in their proper place according to locality; those, of which the situation is variable, such as those in the beds of large rivers, will be shown in the papers of the adjoining estates regardless of temporary changes of situation ; each such mill

1. Substituted *vide* Act III of 2008 for "Wazir Wazarat".
2. Words "Malguzar, Assami", omitted *vide* Act VII of 1995.

will have a separate Field No. and entries regarding all such mills will be made in one place at the end of the *khasra girdawari*.

31. Similarly, all mills will be shown in the *jamabandi* of the village in which they are situated. If the mill-owner is also a land-holder or an occupancy tenant, his status in respect of the *gharat* (water mill) in the *jamabandi* should be the same as he enjoys in respect of the land concerned, as is already provided for in section 13 of this Act. In case the person who has constructed a mill possesses no land in his capacity as land-holder or occupancy tenant, the entry of the mill will be made separately in the "*kasht*" column of the *khewat* concerned. In the former case the land and the mill revenue should be shown separately as under :—

Land revenue demand———
} ———Total demand.
Mill revenue demand———

———

FORM A.

Annual Statement of Water Mills situated in Estates of class (*i*) newly started in Tehsil _____

of the _____ District during the year ending _____ 19 .

Name of Mauza.	Hadbast No.	Name of assessment circle.	No. and date of institution of file.	Khasra No.	Name and parentage of owner (x x x x) or occupancy tenant.	Date when mill was started.	Probable period of working of mill during each year.	Revenue demand (imposed on the mill).	Report of Tehsildar.	[2][Order of Collector].	Harvest from which Revenue leviable.	REMARKS.

1. Words "Malguzar, assami" omitted *vide* Act VII of 1955.
2. Column under "report of Wazir Wazarar" ommitted and for the words "order of Governor," the words "order of Collector" substituted *vide* Act IV of 1955.

FORM B.

Annual Statement of Water mills in Estates of class (*i*) situated in the _____ Tehsil of the _____ District discontinued during the year ending _____ 19 .

Name of Mauza.	Hadbast No.	Name of assessment circle.	No. and date of institution of file.	Khasra No.	Name and parentage of owner 1(x x tenant holding the mill.	Harvest from which mill has been stopped.	Report of Tehsildar giving reasons for discontinuance or disuse of mill, etc.	Report and order of higher authorities.

1. Words "Malguzar Assami" omitted *vide* ActVII of 1995.

FORM C.

Register of Water mills of class (*i*) working in Tehsil_____ District_____

Name of Mauza.	Hadbast No	Name of assessment circle.	Serial No. of mill.	Name of mill-owner.	Assessment.				No. and date of file and orders thereon.	Signature of Tehsildar.	Date on which construction of mill completed.	Harvest from which revenue deemed leviable.	Remarks.
					Revenue.	Cesses.	Malikana.	Total.					

THE CODE OF CRIMINAL PROCEDURE, 1989 (1933 A. D.)

Act No. XXIII of 1989.

CONTENTS.

SECTION.

PART I.

PRELIMINARY.

CHAPTER I.

1. Short title. commencement.

Extent.

2. Repealed.

3. References to Code of Criminal Procedure and other repealed enactments.

Expressions in former enactments.

4. Definitions.

Words referring to acts.

Words to have same meaning as in Ranbir Penal Code.

5. Trial of offences under Ranbir Penal Code.

Trial of offences against other laws.

— — —

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Classes of Criminal Courts.

SECTION.

B—Territorial Divisions.

7. Sessions divisions and districts.

Power to alter divisions and districts.

Existing divisions and districts maintained till altered.

8. Power to divide districts into sub-divisions.

Existing sub-divisions maintained.

C—Courts and Offices.

9. Court of Session.

10. District Magistrate : (Additional District Magistrate).

11. Officers temporarily succeeding to vacancies in office of District Magistrate.

12. Subordinate Magistrates.

Local limits of their jurisdiction.

13. Power to put Magistrate in charge of sub-division.

Delegation of powers to District Magistrates.

14. Special Magistrates.

15. Benches of Magistrates.

Powers exercisable by Bench in absence of special direction.

16. Powers to frame rules for guidance of Benches.

SECTION.

17. Subordination of Magistrates and Benches to District Magistrate; to Sub-divisional Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

18 to 25. Omitted.

26. Omitted

27. Omitted.

CHAPTER III.

POWERS OF COURTS.

A.—Description of offences cognizable by each Court.

28. Offences under Ranbir Penal Code.

29. Offences under other laws.

30. Offences punishable with imprisonment not exceeding seven years.

B.—Sentences which may be passed by Courts of various Classes.

31. Sentences which High Court and Sessions Judges may pass.

32. Sentences which Magistrates may pass.

33. Power of Magistrates to sentence to imprisonment in default of fine.

Proviso as to certain cases.

34. Higher powers of certain District Magistrates.

35. Sentence in cases of conviction of several offences at one trial.

SECTION.

Maximum term of punishment.

C.—*Ordinary and Additional Powers.*

36. Ordinary powers of Magistrates.

37. Additional powers conferrable on Magistrates.

38. Control of District Magistrate's investing power.

D—Conferment, Continuance and Cancellation of Powers.

39. Mode of conferring powers.

40. Powers of officers appointed.

41. Powers may be cancelled.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Public when to assist Magistratesbls and Police.

43. Aid to person, other than police-officer, executing warrant.

44. Public to give information of certain offences.

45. Village-headmen, accountants, landholders and others bound to report certain matters.

Appointment of village--headmen by District Magistrate or Sub-Divisional Magistrate in certain cases for purposes of this section.

THE CODE OF CRIMINAL PROCEDURE, 1989 (1933 A. D.)

Act No. XXIII of 1989.

CONTENTS.

SECTION.

PART I.

PRELIMINARY.

CHAPTER I.

1. Short title. commencement.

Extent.

2. Repealed.

3. References to Code of Criminal Procedure and other repealed enactments.

Expressions in former enactments.

4. Definitions.

Words referring to acts.

Words to have same meaning as in Ranbir Penal Code.

5. Trial of offences under Ranbir Penal Code.

Trial of offences against other laws.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Classes of Criminal Courts.

SECTION.

B—Territorial Divisions.

7. Sessions divisions and districts.

Power to alter divisions and districts.

Existing divisions and districts maintained till altered.

8. Power to divide districts into sub-divisions.

Existing sub-divisions maintained.

C—Courts and Offices.

9. Court of Session.

10. District Magistrate : (Additional District Magistrate).

11. Officers temporarily succeeding to vacancies in office of District Magistrate.

12. Subordinate Magistrates.

Local limits of their jurisdiction.

13. Power to put Magistrate in charge of sub-division.

Delegation of powers to District Magistrates.

14. Special Magistrates.

15. Benches of Magistrates.

Powers exercisable by Bench in absence of special direction.

16. Powers to frame rules for guidance of Benches.

SECTION.

17. Subordination of Magistrates and Benches to District Magistrate; to Sub-divisional Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

18 to 25. Omitted.

26. Omitted

27. Omitted.

CHAPTER III.

POWERS OF COURTS.

A.—Description of offences cognizable by each Court.

28. Offences under Ranbir Penal Code.

29. Offences under other laws.

30. Offences punishable with imprisonment not exceeding seven years.

B.—Sentences which may be passed by Courts of various Classes.

31. Sentences which High Court and Sessions Judges may pass.

32. Sentences which Magistrates may pass.

33. Power of Magistrates to sentence to imprisonment in default of fine.

Proviso as to certain cases.

34. Higher powers of certain District Magistrates.

35. Sentence in cases of conviction of several offences at one trial.

SECTION.

Maximum term of punishment.

C.—*Ordinary and Additional Powers.*

36. Ordinary powers of Magistrates.

37. Additional powers conferrable on Magistrates.

38. Control of District Magistrate's investing power.

D—Conferment, Continuance and Cancellation of Powers.

39. Mode of conferring powers.

40. Powers of officers appointed.

41. Powers may be cancelled.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Public when to assist Magistratesbls and Police.

43. Aid to person, other than police-officer, executing warrant.

44. Public to give information of certain offences.

45. Village-headmen, accountants, landholders and others bound to report certain matters.

Appointment of village--headmen by District Magistrate or Sub-Divisional Magistrate in certain cases for purposes of this section.

SECTION.

CHAPTER V.

OF ARREST, ESCAPE AND RE-TAKING.

A.—Arrest generally.

46. Arrest how made.

Resisting endeavour to arrest.

47. Search of place entered by person sought to be arrested.

48. Procedure where ingress not obtainable.

Breaking open *zenana*.

49. Power to break open doors and windows for purposes of liberation.

50. No unnecessary restraint.

51. Search of arrested persons.

52. Mode of searching women.

53. Power to seize offensive weapons.

B—Arrest without Warrant

54. When police may arrest without warrant.

55. Arrest of vagabonds, habitual robbers, etc.

56. Procedure when police-officer deputes subordinate to arrest without warrant.

57. Refusal to give name and residence.

58. Pursuit of offenders into other jurisdictions.

59. Arrest by private persons and procedure on such arrest.

SECTION.

60. Person arrested to be taken before Magistrate or officer-in-charge of police-station.

61. Person arrested not to be detained more than twenty-four hours.

62. Police to report apprehensions.

63. Discharge of person apprehended.

64. Offence committed in Magistrate's presence.

65. Arrest by or in presence of Magistrate.

66. Power, on escape, to pursue and retake.

67. Provisions of sections 47, 48 and 49, to apply to arrests under section 66.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A. Summons.

68. Form of summons.

Summons by whom served.

69. Summons how served.

Signature of receipt for summons.

70. Service when person summoned cannot be found.

71. Procedure when service cannot be effected as before provided.

72. Service on servant of Government or of Railway Company.

73. Service of summons outside local limits.

SECTION.

74. Proof of service in such cases, and when serving officer not present.

B.—Warrant of Arrest.

75. Form of warrant of arrest.

Continuance of warrant of arrest.

76. Court may direct security to be taken.

Recognizance to be forwarded.

77. Warrants to whom directed.

Warrants to several persons.

78. Warrant may be directed to landholders, etc.

79. Warrant directed to police-officer.

80. Notification of substance of warrant.

81. Person arrested to be brought before Court without delay.

82. Where warrant may be executed.

83. Warrant forwarded for execution outside jurisdiction.

84. Warrant directed to police-officer for execution outside jurisdiction.

85. Procedure on arrest of person against whom warrant issued.

86. Procedure by Magistrate before whom person arrested is brought.

C.—Proclamation and Attachment.

87. Proclamation for person absconding.

88. Attachment of property of person absconding: (Claim preferred: objection made).

89. Restoration of attached property.

D.—Other Rules regarding Processes.

90. Issue of warrant in lieu of, or in addition to, summons.

91. Power to take bond for appearance.

92. Arrest on breach of bond for appearance.

93. Provisions of this Chapter generaly applicable to summonses and warrants of arrest.

E.—Special Rules regarding Processes in certain cases.

93-A Special rules regarding processes in certain cases.

— —

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94. Summons to produce document or other thing.

95. Procedure as to letters and telegrams.

B.—Search-warrants.

96. When search-warrant may be issued.

97. Power to restrict warrant.

98. Search of house suspected to contain stolen property, forged documents, etc.

99. Disposal of things found in search beyond jurisdiction.

SECTION.

99-A. Power to declare certain publications forfeited, and to issue search-warrants for the same.

99-B. Application to High Court to set aside order of forfeiture.

99-C Hearing by special Bench.

99-D. Order of Special Bench setting aside forfeiture.

99-E. Evidence to prove nature or tendency of newspapers.

99-F. Procedure in High Court.

99-G. Jurisdiction barred.

C.—Discovery of persons wrongfully confined.

100. Search for persons wrongfully confined.

D.—General Provisions relating to Searches.

101 Direction, etc. of search-warrants.

102. Persons in charge of closed place to allow search.

103. Search to be made in presence of witnesses.

Occupant of place searched may attend.

E.—Miscellaneous.

104. Power to impound document etc., produced.

105. Magistrate may direct search in his presence.

SECTION.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the peace on Conviction.

106. Security for keeping the peace on conviction.

B —Security for keeping the peace in other Cases and Security for Good Behaviour.

107. Security for keeping the peace in other cases.

Procedure of Magistrate not empowered to act under sub-section (1).

108. Security for good behaviour from persons disseminating seditious matter.

108-A. Omitted.

109. Security for good behaviour from vagrants and suspected persons.

110 Security for good behaviour from habitual offenders.

111. Omitted.

112. Order to be made.

113. Procedure in respect of person present in Court.

114. Summons or warrant in case of person not so present.

115. Copy of order under section 112 to accompany summons or warrant.

SECTION.

116. Power to dispense with personal attendance.

117. Inquiry as to truth of information.

118. Order to give security.

119. Discharge of person informed against.

C.—Proceedings in all cases subsequent to order to furnish Security.

120. Commencement of period for which security is required.

121. Contents of bond.

122. Power to reject sureties.

123. Imprisonment in default of security.

Proceedings when to be laid before High Court or Court of Sessions.

Kind of imprisonment.

124. Power to release persons imprisoned for failing to give security.

125. Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

126. Discharge of sureties.

126-A. Security for unexpired period of bond.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

127. Assembly to disperse on command of Magistrate or police-officer.

128. Use of civil force to disperse.

SECTION.

129. Use of Military force.

130. Duty of officer commanding troops required by Magistrate to disperse assembly.

131. Power of commissioned military officers to disperse assembly.

132. Protection against prosecution for act done under this Chapter.

CHAPTER X.

PUBLIC NUISANCES.

133. Conditional order for removal of nuisance.

134. Service or notification of order.

135. Person to whom order is addressed to obey, or show-cause or claim jury.

136. Consequence of his failing to do so.

137. Procedure where he appears to show cause.

138. Procedure where he claims jury.

139. Procedure where jury finds Magistrate's order to be reasonble.

139-A. Procedure where existence of public right is denied.

140. Procedure on order being made absolute.

Consequences of disobedience to order.

141. Procedure on failure to appoint jury or omission to return verdict.

142. Injunction pending inquiry.

SECTION.

143. Magistrate may prohibit repetition or continuance of public nuisance.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

145. Procedure where dispute concerning land, etc, is likely to cause breach of peace.

Inquiry as to possession.

Party in possession to retain possession until legally evicted.

146. Power to attach subject of dispute.

147. Disputes concerning rights of use of immovable property, etc.

148. Local inquiry.

Order as to costs.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Police to prevent cognizable offences.

150. Information of design to commit such offences.

SECTION.

151. Arrest to prevent such offences.

152. Prevention of injury to public property.

153. Inspection of weights and measures.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

154. Information in cognizable cases.

155. Information in non-cognizable cases.

Investigation into non-cognizable cases.

156. Investigation into cognizable cases.

157. Procedure where cognizable offence suspected.

Where local investigation dispensed with.

Where police-officer in charge sees no sufficient ground for investigation.

158. Reports under section 157 how submitted.

159. Power to hold investigation or preliminary inquiry.

160 Police-officer's power to require attendence of witnesses.

161. Examination of witnesses by police.

162. Statements to police not to be signed; use of statements in evidence.

SECTION.

163. No inducement to be offered.

164. Power to record statements and confessions.

165. Search by police-officer.

166. When officer in charge of police-station may require another to issue search-warrant.

167. Procedure when investigation cannot be completed in twenty-four hours.

168. Report of investigation by subordinate police-officer.

169. Release of accused when evidence deficient.

170. Case to be sent to Magistrate when evidence is sufficient.

171. Complainants and witnesses not to be required to accompany police-officer.

Complainants and witnesses not to be subjected to restraint.

Recusant complainant or witness may be forwarded in custody.

172. Diary of proceedings in investigation.

173. Report of police-officer.

174. Police to inquire and report on suicide, etc.

175. Power to summon persons.

176. Inquiry by Magistrate into cause of death.

Power to disinter corpses.

SECTION.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Ordinary place of inquiry and trial.

178. Power to order cases to be tried in differnt sessions divisions.

179. Accused triable in district where act is done, or where consequence ensues.

180. Place of trial where act is offence by reason of relation to other offence.

181. Being a *thug* or belonging to a gang of dacoits, escape from custody, etc.

Criminal misappropriation and criminal breach of trust.

Theft.

Kidnapping and abduction.

182. Place of inquiry or trial where scene of offence is uncertain, or not in one district only; or where offence is continuing; or consists of several acts.

183. Offence committed on a journey.

184. Omitted.

185. High Court to decide, in case of doubt, district where inquiry or trial shall take place.

SECTION.

186. Power to issue summons or warrant for ofience committed beyond local jurisdiction.

Magistrate's procedure on arrest.

187. Procedure where warrant issued by subordinate Magistrate.

188. Liability of State-Subjects for offences committed out of State.

Government to certify fitness of inquiry into charge.

189. Omitted.

B.— Conditions requisite for initiation of proceedings.

190. Cognizance of offences by Magistrates.

191. Transfer or commitment on application of accused.

192. Transfer of cases by Magistrates.

193. Cognizance of offences by Courts of Session.

194. Cognizance of offences by High Court.

195. Prosecution for contempt of lawful authority of public servants.

Prosecetion for certain offences against public justice.

Prosecution for certain offences relating to documents given in evidence.

196. Prosecution for offences against the State.

SECTION.

196-A. Prosecution for certain classes of criminal conspiracy.

196-B. Preliminary inquiry in certain cases.

197. Prosecution of Judges and public servants.

Power of Gevernment as to prosecution.

198. Prosecution for breach of contract, defamation and offences against marriage.

198-A. Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.

199. Prosecution for adultery or enticing a married woman.

199-A. Objection by lawful guardian to complaint by person other than person aggrieved.

199-B. Form of authorization under second proviso to section 198 or 199.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. Examination of complainant

201. Procedure by Magistrate not competent to take cognizance of the case.

202. Postponement for issue of process.

203. Dismissal of complaint.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. Issue of process.

SECTION.

205. Magistrate may dispense with personal attendance of accused.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. Power to commit for trial.

207. Procedure in inquiries preparatory to commitment.

207-A. Procedure to be adopted in proceedings instituted on police report.

208. Taking of evidence produced. Process for production of further evidence.

209. When accused person to be discharged.

210. When charge is to be framed.

Charge to be explained, and copy furnished, to accused.

211. List of witnesses for defence on trial.

Further list.

212. Power of Magistrate to examine such witnesses.

213. Order of commitment.

214. Omitted.

215. Quashing commitments under section 213.

216. Summons to witnesses for defence when accused is committed.

Refusal to summon unnecessary witness unless deposit made.

217. Bond of complainants and witnesses.

SECTION.

Detention in custody in case of refusal to attend or to execute bond.

218. Commitment when to be notified.

Charge, etc., to be forwarded to High Court or Court of Session.

219. Power to summon supplementary witnesses.

220. Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

221. Charge to state offence.

Specific name of offence sufficient description.

How stated where offence has nospecific name.

What implied in charge.

Language of charge.

Previous conviction when to be set out.

222. Particulars as to time, place and person.

223. When manner of committing offence must be stated.

224. Words in charge taken in sense of law under which offence is punishable.

225. Effect of errors.

226. Procedure on commitment without charge or with imperfect charge.

SECTION.

227. Court may alter charge.

228. When trial may proceed immediately after alteration.

229. When new trial may be directed, or trial suspended.

230. Stay of proceedings if prosecution of offence in altered charge require previous sanction.

231. Recall of witnesses when charge altered.

232. Effect of material error.

Joinder of Charges.

233. Separate charges for distinct offences.

234. Three offences of same kind within year may be charged together.

235. Trial for more than one offence.

Offence falling within two definitions.

Acts constituting one offence, but constituting when combined a different offence.

236. Where it is doubtful what offence has been committed.

237. When a person is charged with one offence, he can be convicted of another.

238. When offence proved included in offence charged.

239. What persons may be charged jointly.

240. Withdrawal of remaining charges on conviction on one of several charges.

SECTION.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

241. Procedure in summons-cases.

242. Substance of accusation to be stated.

243. Conviction on admission of truth of accusation.

244. Procedure when no such admission is made.

245. Acquittal.

Sentence.

246. Finding not limited by complaint or summons.

247. Non-appearance of complainant.

248. Withdrawal of complaint.

249. Power to stop proceedings when no complainant.

Frivolous Accusations in Summons and Warant-cases.

250. False, frivolous or vexatious accusations.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. Procedure in warrant-cases.

251-A. Procedure to be adopted in cases instituted on police report.

252. Evidence for prosecution.

253. Discharge of accused.

254. Charge to be framed when offence appears proved.

255. Plea.

SECTION.

255A. Procedure in case of previous convictions.

256. Defence.

257. Process for compelling production of evidence at instance of accused.

258. Acquittal.

Conviction.

259. Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

260. Power to try summarily.

261. Power to invest Bench of Magistrates invested with less power.

262. Procedure for summons and warrant-cases applicable.

Limit of imprisonment.

263. Record in cases where there is no appeal.

264. Record in appealable cases.

265. Language of record and judgment.

Bench may be authorised to employ clerk.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURT AND COURTS OF SESSION.

A.—Preliminary.

266. Omitted.

267. Omitted.

SECTION.

268. Trials before Court of Session.

269. The Government may order trial before High Court and Court of Session to be by jury.

270. Trial before Court of Session to be conducted by Public Prosecutor.

B.—Commencement of Proceedings.

271. Commencement of trial.

Plea of guilty.

272. Refusal to plead or claim to be tried.

273. Entry on unsustainable charges.

Effect of entry.

C.—Choosing a jury.

274. Number of jury.

275. Omitted.

276. Jurors to be chosen by lot.

277. Names of jurors to be called.

278. Grounds of objection.

279. Decision of objection.

Supply of place of juror against whom objection allowed.

280. Foreman of jury.

281. Swearing of jurors.

282. Procedure when juror ceased to attend, etc.

283. Discharge of jury in case of sickness of prisoner.

SECTION.

D.—Choosing Assessors.

284. Omitted

285. Omitted

E.—Trial to Close of Cases for Prosecution and Defence.

286. Opening case for prosecution.

Examination of witnesses.

287. Examination of accused before Magistrate to be evidence.

288. Evidence given at preliminary inquiry admissible.

289. Procedure after examination of witnesses for prosecution.

290. Defence.

291. Right of accused as to examination and summoning of witnesses.

292. Prosecutor's right of reply.

293. View by jury.

294. When juror may be examined.

295. Jury to attend at adjourned sitting.

296. Locking up jury.

F.—Conclusion of trial in cases tried by jury.

297. Charge to jury.

298. Duty of Judge.

299. Duty of jury.

300. Retirement to consider.

301. Delivery of verdict.

302. Procedure where jury differ.

SECTION.

303. Verdict to be given on each charge.

Judge may question jury,

Questions and answers to be recorded.

304. Amending verdict.

305. Verdict in High Court when to prevail.

Discharge of jury in other cases.

306. Verdict in Court of Session when to prevail.

307. Procedure where Session Judge disagrees with verdict.

G.—Retrial of accused after discharge of jury.

308. Retrial of accused after discharge of jury.

H.—Conclusion of Trial in cases tried by the Judge himself.

309. Judgement in cases tried by the Judge himself.

I.—Procedure in Case of Previous Conviction.

310. Procedure in case of previous conviction.

311. When evidence of previous conviction may be given.

J.—List of Jurors for High Court and summoning Jurors for that Court.

312. Number of special jurors.

313. Lists of common and special jurors.

314. Publication of lists, preliminary and revised.

315. Number of jurors, to be summoned.

Supplementary summons.

316. Summoning jurors outside the place of sitting of High

SECTION.

Court.

317. Military jurors.

318. Failure of jurors to attend.

K.—List of Jurors for Court of Session and summoning Jurors for that Court.

319. Liability to serve as jurors.

320. Exemptions.

321. List of jurors.

322. publication of list.

323. Objections to list.

324. Revision of list.

Annual revision of list.

325. Preparation of list of special jurors.

326. District Magistrate to summon jurors.

327. Power to summon another set of jurors.

328. Form and contents of summons.

329. When Government or Railway servant may be excused.

330. Court may excuse attendence of juror.

Court may retire special jurors from liability to serve again for twelve months.

331. List of jurors attending.

332. Penalty for non-attendance of juror.

L.—Special Provisions for High Court.

333. Power of Advocate General to stay prosecution.

SECTION.

334. Time of holding sittings.

335. Place of holding sittings.

Notice of sittings.

336. Omitted.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. Tender of pardon to accomplice.

338. Power to direct tender of pardon.

339. Commitment of person to whom pardon has been tendered.

339-A. Procedure in trial of person under section 339.

340. Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

341. Procedure where accused does not understand proceedings.

342. Power to examine the accused.

342-A. Accused person to be competent witness.

343. No influence to be used to induce disclosures.

344. Power to postpone or adjourn proceedings.

Remand.

Reasonable cause for remand.

345. Compounding offences.

SECTION.

346. Procedure of provincial Magistrate in cases which he cannot dispose of.

347. Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed.

348. Trial of persons previously convicted of offences against coinage, stamp-law or property.

349. Procedure when Magistrate cannot pass sentence sufficiently severe.

350. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350-A. Changes in constitution of Benches.

351. Detention of offenders attending Court.

352. Courts to be open.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Evidence to be taken in presence of accused.

354. Manner of recording evidence.

355. Record in summons-cases and in trials of certain offences by first and second class Magistrates.

356. Record in other cases.

Evidence given in English.

SECTION.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

357. Language of record of evidence.

358. Option to Magistrate in cases under section 355.

359. Mode of recording evidence under section 356 or section 357.

360. Procedure in regard to such evidence when completed.

361. Interpretation of evidence to accused or his pleader.

362. Omitted.

363. Remarks respecting demeanour of witness.

364. Examination of accused how recorded.

365. Record of evidence in High Court.

CHAPTER XXVI.

OF THE JUDGMENT.

366. Mode of delivering judgment.

367. Language of judgment.

Contents of judgment.

Judgment in alternative.

368. Sentence of death.

369. Court not to alter judgment.

370. Omitted.

SECTION.

371. Copy of judgment, etc., to be given to accused on application.

Case of person sentenced to death.

372. Judgment when to be translated.

373. Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. Sentence of death to be submitted by Court of Session.

375. Power to direct further inquiry to be made or additional evidence to be taken.

376. Power of High Court to confirm sentence or annual convicition.

377. Omitted.

378. Procedure in case of difference of opinion.

379. Procedure in cases submitted to High Court for confirmation.

380. Procedure in cases submitted by Magistrate not empowered to act under section 562.

CHAPTER XXVIII.

OF EXECUTION.

381. Execution of order passed under section 376.

SECTION.

382. Postponement of capital sentence on pregnant woman.

383. Execution of sentences of life imprisonment or imprisonment in other cases.

384. Direction of warrant for execution.

385. Warrant with whom to be lodged.

386. Warrant for levy of fine.

387. Effect of such warrant.

387-A. Warrant for levy of fine issued by courts in India outside Jammu and Kashmir State.

388. Suspension of execution of sentence of imprisonment.

389 Who may issue warrant.

390. Execution of sentence of whipping only.

391. Execution of sentence of whipping, in addition to imprisonment.

392. Mode of inflicting punishment.

Limit of number of stripes.

393. Not to be executed by instalments.

Exemptions.

394. Whipping not to be inflicted if offender not in fit state of health.

Stay of execution.

395 Procedure if punishment cannot be inflicted under section 394.

SECTION.

396. Execution of sentences on escaped convicts.

397. Sentence on offender already sentenced for another offence.

398. Saving as to sections 396 and 397.

399. Confinement of youthful offenders in reformatories.

400. Return of warrant on execution of sentence.

CHAPTER XXIX

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

401. Power to suspend or remit sentences.

402. Power to commute punishment.

CHAPTER XXX.

OF PREVIOUS AQUITTALS OR CONVICTIONS.

403. Person once convicted or acquitted not to be tried for same offence.

PART VII.

OF APPEAL REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

404. Unless otherwise provided, no appeal to lie.

405. Appeal from order rejecting application for restoration of attached property.

SECTION.

406. Appeal from order requiring security for keeping the peace or for good behaviour.

406-A. Appeal from order refusing to accept or rejecting a surety.

407. Omitted.

408. Appeal from sentence of Assistant Sessions Judge or any other Magistrate.

409. Appeals to Court of Session how heard.

410. Appeal from sentence of Court of Session.

411. Omitted.

412. No appeal in certain cases when accused pleads guilty.

413. Appeal in petty cases.

414. No appeal from certain summary convictions.

415. Proviso to sections 413 and 414.

415-A. Special right of appeal in certain cases.

416. Omitted.

417. Appeal in case of acquittal.

418. Appeal on what matters admissible.

419. Petition of appeal.

420. Procedure when appellant in jail.

421. Summary dismissal of appeal.

422. Notice of appeal.

SECTION.

423. Powers of Appellate Court in disposing of appeal.

424. Judgments of subordinate Appellate Courts.

425. Order by High Court on appeal to be certified to lower Court.

426. Suspension of sentence pending appeal.

Release of appellant on bail.

427. Arrest of accused in appeal from acquittal.

428. Appellate Court may take further evidence or direct it to be taken.

429. Procedure where Judges of Court of Appeal are equally divided.

430. Finality of orders on appeal.

431. Abatement of appeals.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432 to 434. Omitted.

435. Power to call for records of inferior Courts.

436. Power to order inquiry.

437. Power to order commitment.

438. Report to High Court.

439. High Court's powers of revision.

440. Optional with Court to hear parties.

441. Omitted.

SECTION.

442. High Court's order to be certified to lower Court or Magistrate.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

443 to 463. Omitted.

CHAPTER XXXIV.

LUNATICS.

464. Procedure in case of accused being lunatic.

465. Procedure in case of person committed before Court of Session or High Court being lunatic.

466. Release of lunatic pending investigation or trial.

Custody of lunatic.

467. Resumption of inquiry or trial.

468. Procedure on accused appearring before Magistrate or Court.

469. When accused appears to have been insane.

470. Judgment of acquittal on ground of lunacy.

471. Person acquitted on such ground to be detained in safe custody.

Power of Government to relieve Inspector General of certain functions.

SECTION.

472. Omitted.

473. Procedure where lunatic prisoner is reported capable of making his defence.

474. Procedure where lunatic detained under section 466 or 471 is declared fit to be released.

475. Delivery of lunatic to care of relative or friend.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. Procedure in cases mentioned in section 195.

476-A. Superior Court may complain where subordinate Court has omitted to do so.

476-B. Appeals.

477. Omitted.

478. Power of Civil and Revenue Courts to complete inquiry and commit to High Court or Court of Session.

479. Procedure of Civil or Revenue Court in such cases.

479-A. Procedure in certain cases of false evidence.

480. Procedure in certain cases of contempt.

481. Record in such cases.

482. Procedure where Court considers that case should not be dealt with under section 480.

483. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

SECTION.

484. Discharge of offender on submission or apology.

485. Imprisonment or committal of person refusing to answer or produce document.

485-A. Summary procedure for punishment for non-attendance by a witness in obedience to summons.

486. Appeals from convictions in contempt cases.

487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. Order for maintenance of wives and children.

Enforcement of order.

489. Alteration in allowance.

490. Enforcement of order of maintenance.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *Habeas Corpus*.

491. Power to issue directions of the nature of a *habeas corpus*.

PART IX.

SUPPLIMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. Power to appoint Public Prosecutors.

SECTION.

493. Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders privately instructed to be under his direction.

494. Effect of withdrawal from prosecution.

495. Permission to conduct prosecution.

CHAPTER XXXIX.

OF BAIL.

496. In what cases bail to be taken.

497. When bail may be taken in case of non-bailable offence.

498. Power to direct admission to bail or reduction of bail.

499. Bond of accused and sureties.

500. Discharge from custody.

501. Power to order sufficient bail when that first taken is insufficient.

502. Discharge of sureties.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. When attendance of witness may be dispensed with.

Issue of commission, and procedure thereunder.

504. Omitted.

505. Parties may examine witnesses.

506. Power of Subordinate Magistrate to apply for issue of commission.

507. Return of commission.

SECTION.

508. Adjournment of proceeding.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. Deposition of medical witness.

Power to summon medical witness.

510. Report of Chemical Examiner

510-A. Evidence on affidavits.

511. Previous conviction or acquittal how proved.

512. Record of evidence in absence of accused.

Record of evidence when offender unknown.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. Deposit instead of recognizance.

514. Procedure on forfeiture of bond.

514-A. Procedure in case of insolvency or death of surety or when a bond is forfeited.

514-B. Bond required from a minor.

515. Appeal from, and revision of, orders under section 514.

516. Power to direct levy of amount due on certain recognizances.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

516-A. Order for custody and disposal of property pending trial in certain cases.

SECTION.

517. Order for disposal of property regarding which offence committed.

518. Order may take form of reference to District or Sub-divisional Magistrate.

319. Payment to innocent purchaser of money found on accused.

520. Stay of order under section 517, 518 or 519.

521. Destruction of libellous and other matter.

522. Power to restore possession of immovable property.

523. Procedure by police upon seizure of property taken under section 51 or stolen.

Procedure where owner of property seized unknown.

524. Procedure where no claimant appears within six months.

525. Power to sell perishable property.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

526. High Court may transfer case, or itself try it.

Notice to Public Prosecutor of application under this section.

Adjournment on application under this section or under section 528

526-A. Omitted.

527. Omitted.

SECTION.

528. Sessions Judge may withdraw cases from Assistant Sessions Judge.

District or Sub-Divisional Magistrate may withdraw or refer cases.

Power to authorise District Magistrate to withdraw classes of cases.

CHAPTER XLIV-A

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEBN AND INDIAN BRITISH SUBJECTS AND OTHERS.

528-A to 528-D. Omitted.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

529. Irregularities which do not vitiate proceedings.

530. Irregularities which vitiate proceedings.

531. Proceedings in wrong place.

532. When irregular commitments may be validated.

533. Non-compliance with provisions of section 164 or 364.

534. Omitted.

535. Effect of omission to prepare charge.

536. Trial without jury of offences triable by jury.

537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

538. Attachment not illegal, person making same not trespsser for defect or want of form in proceedings.

SECTION.

CHAPTER XLVI.

MISCELLANEOUS.

539. Courts and persons before whom affidavits may be sworn.

539-A. Affidavit in proof of conduct of public servant.

539-AA. Authorities before whom affidavits may be sworn.

539-B. Local inspection.

540. Power to summon material witness, or examine person present.

540-A. Provision for inquiries and trial being held in the absence of accused in certain cases.

541. Power to appoint place of imprisonment.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

542. Power of 1st class Magistrate to order prisoner in jail to be brought up for examination.

543. Interpreter to be bound to interpret truthfully.

544. Expenses of complainants and witnesses.

545. Power of Court to pay expenses or compensation out of fine.

546. Payments to be taken into account in subsequent suit.

SECTION.

516-A. Order of payment of certain fees paid by complainant in non-cognizable cases.

547. Moneys ordered to be paid recoverable as fines.

548. Copies of proceedings.

549. Delivery to military authorities of persons liable to be tried by Court martial.

Apprehension of such persons.

550. Powers to police to seize property suspected to be stolen.

551. Powers of superior officers of police.

552 Power to compel restoration of abducted females.

553. Omitted.

554. Power of High Court to make rules.

555. Forms.

555-A. Power of High Court to make rules in respect of petition writers.

556. Case in which Judge or Magistrate is personally interested.

557. Practising pleader not to sit as Magistrate in certain Courts.

558. Power to decide language of Courts.

559. Provision for powers of Judges and Magistrates being exercised by their successors in office.

SECTION.

560. Officers concerned in sales not to purchase or bid for property.

561. Special provisions with respect to offence of rape by a husband.

561-A. Saving of inherent power of High Court.

First offenders.

562. Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

Conviction and release with admonition.

563. Provision in case of offender failing to observe conditions of his recognizances.

SECTION.

564. Conditions as to abode of offender.

Previously convicted offenders.

565. Order for notifying address of previously convicted offender.

SCHEDULE I.—OMITTED.

SCHEDULE II.—TABULAR STATEMENT OF OFFENCES.

SCHEDULE III.—ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

SHEDULE IV.—ADDITONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

SCHEDULE V.—FORMS.

THE CODE OF CRIMINAL PROCEDURE, 1989 (1933 A. D.)

Act No. XXIII of 1989.

[*Sanctioned by His Highness the Maharaja Bahadur* vide *Notification No.* 43-*L*/1989, *dated 4th January*, 1933/26*th Poh*, 1989. *Published in Government Gazette dated* 17*th Katik*, 1990 *and correction slip published in Government Gazette dated* 18*th Jeth*, 1991].

An act to consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure ; It is hereby enacted as follows :—

PART 1.

PRELIMINARY.

CHAPTER 1

1. (1) This Code may be called the Code of Criminal Procedure, and it shall come into force on the first day of Phagan, 1989.

Short title, commencement.

(2) (*a*) It extends to the whole of Jammu and Kashmir State; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Extent.

[1](*b*) Repealed.

2. Repealed.

3. (1) In every enactment passed before this Code comes into force in which reference is made to, or to any Chapter or section of, the Code of Criminal Procedure, for the time being in force, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Chapter or section.

Reference to Code of Criminal Procedure.

(2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having) the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class" and "Subordinate, Magistrate second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class ;" the expression"Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate;" the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

Expressions in former enactments.

4. (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

Definitions.

1. Sub-section 2 (*b*) of section 1 deleted *vide* Act X of 1996.

(*a*) "Advocate General" includes also a Government Advocate or, where there is no Advocate General or Government Advocate, such officer as [1][the Government] may, from time to time, appoint in this behalf :

"Advocate General."

(*b*) "bailable offence" means an offence shown as bailable in the second Schedule, or which is made bailable by any other law for the time being in force ; and "non-bailable offence" means any other offence :

"Bailable offence"

"Non-bailable offence."

(*c*) "charge" includes any head of charge when the charge contains more heads than one :

"Charge".

(*d*) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer may, in accordance with the second Schedule or under any law for the time being in force, arrest without warrant:

"Cognizable offence."

"Cognizable case"

(*e*) "complaint" means the allegation made orally or in writing to a Magistrate, with a veiw to his taking action under this Code, that some person, whether known or unknown, has committed an offence but it does not include the report of a police-officer :

"Complaint"

[2](*f*) "High Court" means the highest Court of criminal appeal and revision in the Jammu and Kashmir State :

"High Court."

(*g*) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court :

"Inquiry"

(*h*) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf :

"Investigation."

(*i*) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath :

"Judicial proceeding"

(*j*) non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, may not arrest without warrant :

"Non cognizable offence."

"Non-cognizable case"

1. In sections 4 (1) (*a*) (*l*) and (*p*), 7 (2), 8, 9, 10 11, 12, 45 (3), 108, 132, 157, 158, 161, 173, 178, 188, 193 (2), 196, 196-A, 197, 218, 261, 263, 265, 319, 320 (*l*), 321, 335, 357, 358, 382, 386, 392, 399, 422, 464, 466, 471, 474, 483, 492, 495, 528, 541, 544 and 554 the words "the Government" substituted for the words 'His Highness" *vide* Act X of 1996,

2. Substituted *vide* Notification 3-L/85 dated 6th August, 1928/23rd Sawan, 1985 published in Government Gazette dated 8th Bhadon 1985.

(*k*) "offence" means any act or omission made punishable by any law for the time being in force ;

"Offence."

it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1977 :

(*l*) "officer-in-charge of a police-station" includes, when the officer-in-charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when [1][the Government] so direct, any other police-officer so present :

"Officer-in-charge of police-station."

(*m*) "place" includes also a house, building, tent and vessel.

"Place."

(*n*) "pleader" used with reference to any proceeding in any Court, means a pleader authorised under any law * for the time being in force to practise in such Court, and includes (1) an advocate, a vakil [2][and an attorney] of the High Court so authorised, and (2) any other person appointed with the permission of the Court to act in such proceeding :

"Pleader."

(*o*) "police-station" means any post or place declared, generally or specially, by [3][the Government] to be a police-station, and includes any local area specified by [3][the Government] in this behalf :

"Police-station.

(*p*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of [1][the Government] in the High Court in the exercise of its original criminal jurisdiction :

"Public Prosecutor"

(*q*) "sub-division" means a sub-division of a district :

"Sub-division."

(*r*) "summons-case" means a case relating to an offence, and not being a warrant-case : and

"Summons case."

1. See footnote under section 4 (1) (a).
2. The words "and an attorney" were omitted by Schedule I of Consolidation Act but were restored by Notification 3-L/85 dated the 5th August, 1928 published in Government Gazette dated 8th Bhadon, 1985.
3. Substituted *vide* Act VII of 2001 for "His Highness".

*See Legal Practitioners Act, 1977 (XXIII of 1977).

(*s*) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding [1][one year].

Warrant-case.

(2) Words which refer to acts done, extend also to illegal omissions ; and

Words referring to acts.

all words and expressions used herein and defined in the Ranbir Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Words to have same meaning as in Ranbir Penal Code.

5. (1) All offences under the Ranbir Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Trial of offences under Ranbir Penal Code.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Trial of offences against other laws.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be four classes of Criminal Courts in Jammu and Kashmir State, namely :—

Classes of Criminal Courts.

I. Courts of Session :
II. Magistrates of the first class :
III. Magistrates of the second class :
IV. Magistrates of the third class.

1. Substituted *vide* Act XLII of 1956 for "six months."

B.—Territorial Divisions.

7. (1) Every province shall be a sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Gode, be a district or consist of districts.

Sessions divisions and districts.

(2) [1][The Government] may alter the limits or the number of such divisions and districts.

Power to alter divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force, shall be sessions divisions and districts respectively, unless and until thay are altered,

Existing divisions and districts maintained till altered.

(4) Omitted.

8. (1) [1][The Government] may divide any district into sub-divisions or make any portion of any such district a sub-division and may alter the limits of any sub-division.

Power to divide districts into sub-divisions.

(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing sub-divisions maintained.

C.—Courts and Offices.

9. (1) [1][The Government] shall establish a Court of Session for every sessions division and appoint a judge of such Court,

Court of Session.

(2) [2][The Govetnment may, by general or special order in the Government Gazette, direct at what place or places the Court of Session shall ordinarily hold its sitting; but if in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division it may with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.]

(3) [1][The Government] may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by [1][the Government] to be also an Additional

1. See footnote under section 4 (1) (*a*).
2. Section 9 (2) substituted *vide* Act XLII of 1956.

Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as [1][the Government] may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Code.

District Magistrate.

10. (1) In every district [1][the Government] shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The [2][Government] may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the [2][Government] may direct.

(3) For the purposes of sections 192 sub-section (1), 407 sub-section (2), and 528 sub-sections (2) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of [1][the Government], exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. (1) The [2][Government] may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district; and the [2][Government] or the District Magistrate, subject to the control of [1][the Government] may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

1. See footnote under section 4 (1) (*a*).

2. In sections 10 (2), 12 (1), 13, 14, 15 (1), 16, 37, 38, 39 (1), 40, 41 (1), 108, 110, 134, 143, 144, 164 (1), 167 (2), 174, 186 (1), 190, 206 (1), 260, (1), proviso, 524 (1), 562 (1) proviso, 565 (3) and in Schedule IV for the words "High Court" wherever they occur the word "Government" substituted *vide* Act, XV of 2004. (Sections 10 and 12 were earlier amended by Notifications 6-L/82 and 3-L/85. Notification3-L/85 was published in Government Gazette dated 8th Bhadon, 1985).

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

Local limits of their jurisdiction.

13. (1) The [1][Government] may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

Power to put Magistrate in charge of sub-division.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) The [1][Government] may delegate its powers under this section to the District Magistrate.

Delegation of powers to District Magistrate.

14. (1) The [1][Government] may confer upon any person [2][who holds or has held any judicial post under the State or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the Government by notification in the Government Gazette] all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area in the State.

Special Magistrates

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the [1][Government] may by general or special order direct.

(3) Omitted.

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

[1]**15.** (1) The [1][Government] may direct any two or more Magistrates in any place to sit together as a Bench, and may by order invest such Bench with any of the powers, conferred or conferrable by or

Benches of Magistrates.

1. See footnote under section 10 (2).
2. Inserted *vide* Act, XLII of 1956.

under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the [1][Government] thinks fit.

Powers exercisable by Bench in absence of special direction.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches.

16. The [1][Government] may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects :—

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Magistrates and Benches to District Magistrate;

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

to Sub-divisional Magistrate.

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business

1. See footnote under section 10(2).

among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

18 to 25. Omitted.

[1]**26.** Omitted.

27. Omitted.

CHAPTER III.

POWERS OF COURTS.

A.—*Description of offences cognizable by each Court.*

28. Subject to the other provisions of this Code any offence under the Ranbir Penal Code may be tried—

Offences under Ranbir Penal Code.

(*a*) by the High Court, or
(*b*) by the Court of Session, or
(*c*) by any other Court by which such offence is shown in the eighth column of the second Schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

1. Section 26 omitted *vide* Act X of 2010.

29. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constitued under this Code by which such offence is shown in the eighth column of the second Schedule to be triable.

[1][30. Notwithstanding anything contained in section 28 or section 29, the Government may, in consultation with the High Court invest any District Magistrate, or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

Offences punishable with imprisonment not exceeding seven years.

Provided that, no District Magistrate, or Magistrate of first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of first class.]

B.—Sentences which may be passed by Courts of various Classes.

31. (1) The High Court may pass any sentence authorised by law. [2][x x x]

Sentences which High Court and Sessions Judges may pass.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death or of life imprisonment passed by any such Judge shall be subject to confirmation by [3][the High Court].

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of life imprisonment, or of imprisonment for a term exceeding [4][ten years].

1. Section 30 substituted *vide* Act XLII of 1956.
2. Certain words omitted *vide* Act X of 2010.
3. Substituted *vide* Act X of 2010 for "His Highness".
4. Substituted *vide* Act XLII of 1956 for "seven years".

32. (1) The Courts of Magistrates may pass the following sentences, namely :—

Sentences which Magistrates may pass.

(*a*) Courts of Magistrates of the first class :	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ;	
	Fine not exceeding [1][two thousand] rupees ;	
	Whipping.	
(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law ;	
	Fine not exceeding [2][five hundred]	
	[3]x	x x x
(*c*) Courts of Magistrates of the third class :	Imprisonment for a term not exceeding one month ;	
	Fine not exceeding [4][one hundred] rupees.	

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

(3) Omitted.

33. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorised by law in case of such default :

Power of Magistrates to sentence to imprisonment in default of fine.

Proviso as to certain cases,

Provided that—

(*a*) the term is not in excess of the Magistrate's powers under this Code ;

(*b*) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

1. Substituted *vide* Act XLII of 1956 for "one thousand".
2. Substituted *vide* Act XLII of 1956 for "two hundred"
3. Words "whipping (if specially empowered)" were repealed. by Notification No. 9-L/83 published in Government Gazette dated 18th Sawan, 1983.
4. Substituted *vide* Act XLII of 1956 for "fifty".

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorised by law, except a sentence of death [1][or of imprisonment for life] or imprisonment for a term exceeding seven years.

Sentence in cases of conviction of several offences at one trial

35. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Ranbir Penal Code, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict ; such punishments, when consisting of imprisonment, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided as follows:—

Maximum term of punishment.

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

C.—Ordinary and additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-Divisional Magistrates and Magistrates of the first, second and third classes, have the powers

1. Inserted *vide* Act XLII of 1956.

hereinafter respectively conferred upon them and specified in the third Schedule. Such powers are called their "ordinary powers".

Additional powers conferable on Magistrates

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the fitst, second or third class may be invested by the [1][Government] or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the [1][Government] or the District Magistrate.

Control of District Magistrate's investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the [1][Government].

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39 (1) In conferring powers under this Code the [1][Government] may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Powers of officers appointed.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area, he shall, unless the [1][Government] otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Power may be cancelled.

41. (1) The [1][Government] may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

———

1. See footnote under section 10 (2).

PART III

General Provisions

CHAPTER IV

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

Public when to assist Magistrate and Police.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, —

(*a*) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest ;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempeted to be committed to any railway, canal, telegraph or public property.

Aid to person, other than Police-officer, executing warrant.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44 (1) Every person, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Ranbir Penal Code, (namely), 121, 121-A, 122, 123, 124, 124-A,125, 126, 130, 143, 144, 147, 148, 302, 303, 304, 382, 392,393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456,457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of Jammu and Kashmir State which would constitute an offence if committed in Jammu and Kashmir State.

Village headmen, accountants, landholders and others bound to report certain matters.

45. (1) Every village headman, village accountant, village watchman, village police-officer, owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land [1][and every member of a village panchayat, other than a judicial panchayat (where such panchayat, by whatever name called, is constituted under any law for the time being in force)] and every officer empolyed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer-in-charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a robber, escaped convict or proclaimed offender ;

(*c*) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147 or 148 of the Ranbir Penal Code ;

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person ;

(*e*) the commission of, or intention to commit, at any place out of the Jammu and Kashmir State near such village any act which, if committed in the Jammu and Kashmir State, would be an offence punishable under any of the following sections of the Ranbir Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489-A, 489-B, 489-C and 489-D;

1. Inserted *vide* Act XLII of 1956.

(*f*) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of [1][the Government,] has directed him to communicate information.

(2) In this section—

(*i*) "village" includes village-lands ; and

(*ii*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by [1][the Government] in any part of Jammu and Kashmir State in respect of any act which, if committed in Jammu and Kashmir State, would be punishable under any of the following sections of the Ranbir Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village-headmen by District Magistrate or Sub-Divisional Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by [2][the Government], the District Magistrate or Sub-Divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

Arrest how made.

46. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

1. Substituted *vide* Act VII [2001 for "His Highness".
2. See footnote under section (1)(a).

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with life imprisonment.

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, [1][any person residing] in, or being in charge of, such place, shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Breaking open *Zenana*.

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any police-officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

1. Substituted *vide* Act XLII of 1956 for "the person residing."

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of Government;

fourthly, any person in whose possession anything is

found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly, any person why obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

sixthly, any person reasonably suspected of being a deserter [1][x x x x] from [2][Indian] Army or Navy [3][x x x x];

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Jammu and Kashmir State which, if committed in Jammu and Kashmir State would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in Jammu and Kashmir State ;

eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3) ; and

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Arrest of vagabonds, habitual robbers, etc.

55. Any officer-in-charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precuations to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extor-

1. Words "from His Highness' Army or" deleted *vide* Act X of 2010.
2. Substituted *vide* A. L. O. 2008 for "His Majesty's".
3. Certain words deleted *vide* A. L. O. 2008.

tion habitually puts or attempts to put persons in fear for injury.

Procedure when police-officer deputes subordinate to arrest without warrant.

56. When any officer-in-charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

Refusal to give name and residence.

57. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that if such person is not resident in Jammu and Kashmir State, the bond shall be secured by a surety or sureties resident in Jammu and Kashmir State.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this Chapter, pursue such person into any place in Jammu and Kashmir State.

Arrest by private persons and procedure on such arrest.

59. (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested

to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Person arrested to be taken before Magistrate or officer-in-charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer-in-charge of a police-station.

Person arrested not to be detained more than twenty-four hours.

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Police to report apprehensions.

62. Officers-in-charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons, have been admitted to bail or otherwise.

Discharge of person apprehended.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest

or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and arrest him in any place in Jammu and Kashmir State.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest

---

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. (1) Every summons issued by a Court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Summons by whom served.

(2) Such summons shall be served by a police-officer, or subject to such rules as the High Court may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

Summons how served.

69. (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in Jammu and Kashmir State. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when service cannot be effected as before provided.

71. If service in the manner mentioned in sections 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or home-stead in which the person summoned ordinarily resides ; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Company.

72. (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate toa Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases and when serving officer not present.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the

hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

76. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, but any Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other

person or persons ; and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrants to several persons.

78. (1) A District Magistrate or Sub-Divisional Magistrate may direct a warrant to any land-holder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to land-holders, etc.

(2) Such land-holder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to police-officer.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Notification of substance of warrant.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Person arrested to be brought before Court without delay.

82. A warrant of arrest may be executed at any place in Jammu and Kashmir State.

Where warrant may be executed.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-

Warrant forwarded for execution outside jurisdiction.

officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

Warrant directed to police officer for execution outside jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer-in-charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) Omitted.

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or District Superintendent.

Procedure by Magistrate before whom person arrested is brought.

86. (1) Such Magistrate or District Superintendent shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such

Magistrate or District Superintendent, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or District Superintendent shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C. - Proclamation and Attachment.

Proclamation for person absconding.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows: —

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requriements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such

property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(*a*) by seizure ; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases.—

(*a*) by taking possession; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf ; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XL of the Code of Civil Procedure.

(6-*a*) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6-*b*) Claims or objections under sub-section (6-a) may be preferred or made in the Court by which the order of attach-

ment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate in accordance with the provisions of sub-section (2), in the Court of such Magistrate.

(6-c) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that if it is preferred or made in the Court of a District Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class subordinate to him.

(6 d) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-a) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6-e) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, and until any claim preferred or objection made under sub-section (6-a) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than [1][a juror], issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

E.—Special Rules regarding Processes in certain cases.

Special rules regarding prosesses in certain cases.

[2][**93A.** (*i*) In this section the expression 'internal court' means any Court in the territories to which this Code extends, and the expression 'external court' means any Court in any of the States of India excepting the State of Jammu and Kashmir.

1. Substituted *vide* Act XLII of 1956 for "an assessor".
2. Section 93-A inserted *vide* Act II of 2011.

(2) Where an internal Court desires that a summons to, or a warrant for the arrest of, an accused person issued by it shall be executed at any place within the local limits of the jurisdiction of an external Court, it may send such summons or warrant in duplicate, by post or otherwise, to the presiding officer of that Court to be served or executed; and where any such summons has been so served the provisions of section 74 shall apply in relation to such summons as if the presiding officer of the external Court to whom it is sent were a Magistrate in the territories to which this Code extends.

(3) Where an internal Court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by an external Court, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another internal Court for service or execution within the local limits of its jurisdiction; and where any such warrant of arrest has been so executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 85 and 86.]

CHAPTER VII

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. (1) Whenever any Court, or any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1977, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

Procedure as to letters and telegrams.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search warrant ; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend ; and the person charged with the execution of such warrant shall then search or inspect only the place or part

so specified.

Search of house suspected to contain stolen property, forged documents, etc.

98. If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture o forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for orging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging are kept or deposited in any place,

[1][or, if a District Magistrate, Sub-divisional Magistrate upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Ranbir Penal Code or that any such obscene objects are kept or deposited in any place],

he may by his warrant authorise any police-officer above the rank of a constable—

(*a*) to enter with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials "or of any such obscene objects" as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials "or such obscene objects" before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit. sale or manufacture or keeping of any such property, documents, seals, stamps. coins, instruments or materials, or such obscene objects knowing or having reasonable cause to suspect the said property to have been stolen or

1. Inserted *vide* Notification No. 15-L/83, published in Government Gazett dated 29th Bhadon, 1983.

otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited or the said insturments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging, "or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate: and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

Power to declare certain publications forfeited and to issue search warrants for the same.

99-A. (1) Where—

(a) any newspaper, or book as defined in the Press and Publications Act No. I of 1989, or

(b) any document,

wherever printed, appears to [1][the Government] to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the State Subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class, by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under sections [2][124-A] 153-A and 295-A of Ranbir Penal Code, [3][the Government may by notification in the Government Gazette, stating the grounds of their opinion] declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to the Government and thereupon any police-officer may seize the same, wherever found in the Jammu and Kashmir State, and any Magistrate may by warrant authorise any police-officer not below the rank of Sub Inspector to enter upon and search for the same in any

1. Substituted *vide* Act III of 2000 for certain words.
2. Substituted *vide* Act III of 2000 for "121"
3. Substituted *vide* Act III of 2000 for certain words.

premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph or other visible representation.

99-B. Any person having any interest in any newspaper, book or other document in respect of which an order of forfeiture has been made under section 99-A, may within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A.

Application to High Court to set aside order of forfeiture.

99-C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

Hearing by Special Bench.

99-D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A, set aside the order of forfeiture.

Order of Special Bench setting aside forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

99-E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

Evidence to prove nature or tendency of newspapers.

99-F. The High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such application, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of the Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such application.

Procedure in High Court.

99-G. No order passed or action taken under section 99-A shall be called in question in any Court otherwise than in accordance with the provisions of section 99-B.]

Jurisdiction barred.

C. Discovery of persons wrongfully confined.

100. If any Magistrate of the first class or Sub-Divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Search for persons wrongfully confined.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, section 99-A or section 100.

Direction, etc., of search-warrants.

102. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

103. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the

Search to be made in presence of witnesses.

place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person [1][x x x]

(4) When any person is searched under section 102 sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person [1][x x x].

(5) Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Ranbir Penal Code.

E.—Miscellaneous.

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

---

1. Words "at his request" omitted *vide* Act XLII of 1956.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. (1) Whenever any person accused of any offence punishable under Chapter VIII of the Ranbir Penal Code, other than an offence punishable under section 143, section 149, section 153-A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before the High Court, a Court of Session, a District Magistrate, a Sub Divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court including a Court hearing appeals under section 407 or by the High Court when exercising its powers of revision.

B.—Security for keeping the peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. (1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may, in manner hereinafter provided,

require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

[1][(2) Proceedings under this section may be taken before any Magistrate empowered to proceed under sub-section (1) when either the place where the breach of the peace or disturbance is apprehended is within the local limits of such Magistrate's jurisdiction or there is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such limits.]

Procedure of Magistrate not empowered to act under sub-section (1).

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter.

Security for good behaviour from persons disseminating seditious matter.

108. Whenever a District Magistrate, or Magistrate of the first class specially empowered by the [2][Government] in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Ranbir Penal Code, or

(*b*) any matter the publication of which is punishable under section 153-A of the Ranbir Penal Code, or

(*c*) any matter concerning a Judge which amounts to

1. Section 107 (2) substituted *vide* Act XLII of 1956.
2. See footnote under section 10 (2).

criminal intimidation or defamation under the Ranbir Penal Code,

such Magistrate, if in his opinion there is sufficient ground for proceeding may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with the rules laid down in the Press and Publications Act, 1989, with reference to any matter contained in such publication except by the order or under the authority of [1][the Government] or some officer empowered by it in this behalf.

[2]**108 A.** Omitted.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behaf by the [3][Government] receives information that any person within the local

1. See footnotes under section 4 (1) (*a*).
2. Scetion 108-A omitted *vide* Act XXV of 2011.
3. See footnote under section 10 (2).

limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker, thief or forger, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids, in the concealment or disposal of stolen property, or

[2][(*d*) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping abduction, extortion, cheating or mischief, or any offence puhishable under Chapter XII of the Ranbir ,Penal Code, or under section 489-A, section 489-B, section 489-C or section 489-D of that Code, or]

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

111. Omitted.

Order to be made.

112. When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him

2. Clause (d) substituted *vide* Notification No. 14-L 283, published in Government Gazette dated 29th Bhadon, 1983.

before the Court :

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commisssion of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under the same.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

[1][(2) Such inquiry shall be made, as nearly as may be practicable, in the manner here-in-after prescribed for conducting trials and recording evidence in summons cases.

(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry,

1. Section 117 (2) substituted *vide* Act XLII of 1956.

and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that,--

(*a*) no person against whom proceedings are not being taken under section 108, section 109 or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(*b*) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Order to give security.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided---

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an

entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

122. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Power to reject securities.

Provided that before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that before making an order rejecting any surety

who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

Imprisonment in default of security.

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

Proceedings when to be laid before High Court or Court of Sessions.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3-a) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3-b) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3-a) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

124. (1) Whenever the District Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Power to release persons imprisoned for failing to give security.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) [1][The Government] may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or

1. Substituted *vide* Act VII of 2001 for "His Highness".

ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Discharge of sureties.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his juridiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

Security for unexpired period of bond.

126-A. When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) Omitted.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or solider in [1][the Army,] for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force:

Provided that the sanction of [2][the Government] shall be obtained within reasonable time for that said purpose when practicable.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in [1][the Army,] to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

1. Substituted *vide* Act X of 2010 for "His Highness' Army".
2. Substituted *vide* Act X of 2010 for "His Highness or during his absence from the State by the Chief of the Staff, Jammu and Kashmir State forces with the concurrence of the Prime Minister." (For earlier amendment see Act XVII of 2004.)

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of commissioned military officer to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commisioned officer of [1][the Artmy] may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for act done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of [2][the Government]; and—

(*a*) no Magistrate or police-officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

1. Substituted *vide* Act X of 2010 for "His Highness' Army."
2. See footnote under section 4 (1) (a).

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or

modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Service or notification of order.

134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the [1][Government] may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey, or how cause or claim ury.

135. The person against whom such order is made shall—

(*a*) perform, within the time and in the manner specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Ranbir Penal Code, and the order shall be made absolute.

Procedure where he appears to show cause.

137. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

1. See footnote under section 10 (2).

Procedure where he claims jury.

138. (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

Procedure where jury finds Magistrate's order to be reasonable.

139 (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any.)

(2) In other cases no further proceedings shall be taken under this Chapter.

Procedure where existence of public right is denied.

139 A. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who having made such denial, has failed to adduce reliable, evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall

any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138

Procedure on order being made absolute.

140. (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Ranbir Penal Code.

Consequences of disobedience to order.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or

to prevent such injury.

(3) No suit shall lie inrespect of anything done in good faith by a Magistrate underthis section.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the [1][Government] in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Ranbir Penal Code or any special or local law.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the [1][Government] to act under this section, there is sufficient ground for proceeding under this section, and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on

1. See footnote under section 10 (2).

the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order ; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof ; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the [1][Government], by notification in the Jammu and Kashmir Government Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute [2][and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims].

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such

1. See footnote under section 10 (2).
2. Inserted *vide* Act XLII of 1956.

person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

[1][(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Inquiry as to possession.

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein :

Provided further that if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.]

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was or should under the [2][second proviso] to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the [2][second proviso] to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

Party in possession to retain possession until legally evicted.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased

1. Section 145 (4) substituted *vide* Act XLII of 1956.
2. Substituted *vide* Act XLII of 1956 for "first proviso."

party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Power to attach subject of dispute.

146. [1][(1) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession, of the subject of dispute, he may attach it, and draw up a statement of the facts of the case and forward the record of the proceeding to a civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub-section (4) of section 145; and he shall direct the parties to appear before the civil Court on a date to be fixed by him:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(I-a) On receipt of any such reference, the civil Court shall peruse the evidence on record and take such

1. Sub-sections (1), (1-a), (1-b), (1-c), (1-d), and (1-e) substituted for original sub-section (I) of section 146 *vide* Act XLII of 1956.

further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it.

(1-b) The civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties befor it, conclude the inquiry and transmit its finding togehter with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under section 145 in conformity with the decision of the civil Court.

(1-c) The costs, if any, consequent on a reference for the decision of the civil Court, shall be costs in the proceedings under this section.

(1-d) No appeal shall lie from any finding of the civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed.

(1-e) An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction.]

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure :

Provided that in the event of a reciever of the property, the subject of dispute, being subsequently appointed by any civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Disputes concerning right of use of immoveable property, etc

147. (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed

by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter [1][in the manner hereinafter provided].

[2][(1-a) The Magitrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists and the provisions of section 145 shall, as far as may be, be applicable in the case of such inquiry.]

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a civil Court of competent jurisdiction.

Local inquiry.

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the the person so deputed may be read as evidence in the case.

Order as to costs.

(3) When any costs have been incurred by any party to a proceeding under this Chapter, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any

1. Substituted *vide* Act XLII of 1956 for certain words.
2. Sub-section (1-a) of section 147 inserted *vide ibid.*

other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses and of pleaders, fees, which the Court may consider reasonable.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Information of design to commit such offence.

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or to take cognizance of the commission of any such offence.

Arrest to prevent such offences.

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or other mark used for navigation.

Inspection of weights and measures.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searsching for any weights or measures or istruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same,

and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offience if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as [1][the Goverment] may prescribe in this behalf.

Information in non-cognizable cases.

155. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

Investigation into cognizable cases.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the local limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

1. Substituted *vide* Act VII of 2001 for "His Highness".

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Procedure where cognizable offence suspected.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as [1][the Government] may, by general or special order, prescribe in this behalf to proceed to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :

Provided as follows :—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;

Where police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by [1][the Government], the fact that he will not investigate the case or cause it to be investigated.

Reports under section 157 how submitted.

158. (1) Every report sent to a Magistrate under section 157 shall, if [1][the Government] so directs, be submitted through such superior officer of police as [1][the Government], by general or special order, appoint in that behalf.

1. See footnote under section 4 (1)(a).

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of the case in manner provided in this Code.

Police-officer's power to require attendance of witnesses.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required:

[1][Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides].

Examination of witnesses by police.

161. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as [2][the Government] may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

[3][(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement, of each such person whose statement he records].

1. Proviso to section 160 added *vide* Act XLII of 1956.
2. See footnote under section 4 (1) (a)
3. Sub-section (3) to section 161 added *vide* Act VIII of 2003.

[1][**162.** (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Statements to police not to be signed; use of statements in evidence.

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Evidence Act, 1977 (XIII of 1977) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1) of the Evidence Act, 1977 (XIII of 1977), or to affect the provisions of section 27 of that Act].

163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made any such inducement, threat or promise as is mentioned in the Evidence Act, 1977, section 24.

No inducement to be offered.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free-will.

164. (1) Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by [2][the Government] may, if he is not a police-officer, record any statement or confession made to him in the course

Power to record statements and confessions.

1. Section 162 substituted *vide* Act XLII of 1956.
2. Substituted *vide* Act XV of 2004 for "High Court" (For earlier amendments see Acts X of 1996 and VI of 2002).

of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such con'essions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such con'ession unless, upon questioning the person making it, he has reason to beleive that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.
Magistrate."

EXPLANATION.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Search by police-officer.

165. (1) Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to

be made, for such thing in any place within the limits of such station.

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched, shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

When officer in charge of police-station may require another to issue search warrants.

166. (1) An officer in charge of a police-station or a police-officer. not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section. 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer makeing an investigation under this Chapter to search, or cause

to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

167. (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

Procedure when investigation cannot be completed in twenty-four hours.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days on the whole. If he has not jurisdiction to try the case or commit it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that, no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by [1][the Government] shall authorise detention in the custody of the police.

1. See footnote under section 10 (2).

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate Police-officer.

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute

a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial provided reasonable notice of such reference is given to such complainant or persons.

(4) The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

Complainants and witnesses not to be subject to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agent shall be entitled to call for such diaries, nor shall he or they be entitled

to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1977, section 161 or section 145, as the case may be, shall apply.

173 (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

Report of police-officer.

(*a*) forward to a Magistrate, empowered to take cognizance of the offence on a police-report, a report, in the form prescribed by [1][the Government,] setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(*b*) communicate, in such manner as may be prescribed by [1][the Government] the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which [1][the Government] by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

[2][(4) After forwarding a report under this section the officer in charge of the police-station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under

1. See footnote under section 4 (1)(*a*).
2. Sub-sections (4) and (5) substituted for the original sub-section (4) of section 173, *vide* Act XLII of 1956.

sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-section (3) of section 161 is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part :

Provided that at the commencement of the inquiry or trial the Magistrate shall, after perusing the part so excluded and considering the report of the police-officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.]

Police to inquire and report on suicide, etc.

174. (1) The officer in charge of a police-station or some other police-officer specially empowered by the [1][Government] in that behalf, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the [1][Government,] or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death or when for any. other reason the police-officer considers it

1. Substitated *vide* Act XV of 2004 for "High Court,"

expedient so to do, he shall, subject to such rules as the [1][Government] may prescribe in this behalf, forward the body, with a veiw to its being examined, to the nearest medical officer or other qualified medical man appointed in this behalf by [2][the Government,] if the state of the weather and the distance admit of being so forwarded without risk of such putrefaction on the road as would render such examination useless

(4) Omitted.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class and any Magistrate especially empowered in this behalf by the [1][Government].

Power to summon persons.

175. (1) A police-officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*) of subsection (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the

1. Substituted *vide* Act XV of 2004 for "High Court".
2. Substituted *vide* Act VII of 2001 for "His Highness".

Magistrate may cause the body to be disinterred and examined.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

178. Notwithstanding anything contained in section 177, [1][the Government] may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division :

Power to order cases to be tried in different sessions divisions.

Provided that such direction is not repugnant to any direction previously issued by the High Court under its constitution or under rules framed thereunder, or under this Code, section 526.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Accused triable in district where act is done or where consequence ensues.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction

1. See footnote under section 4 (r) (*e*).

of either Court Y or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(*d*) A is wounded in the [1][State of Surashtra,] and dies of his wounds in Srinagar. The offence of causing A's death may be inquired into and tried in Srinagar.

Place of trial where act s offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonesty received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a *thug* or belonging to a gang of decoits, escape from custody, etc.

181. (1) The offence of being a *thug*, of being a *thug* and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property, which is the subject of the offence, was

1. Substituted *vide* A. L. O. 2008 for "Native State of Baroda."

received or retained by the accused person, or the offence was committed.

Theft.

(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Kidnapping and abduction.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Place of inquiry or trial, where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. Omitted.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185. Whenever a question arises as to which of two or more Courts subordinate to the High Court ought to inquire into or try any offence, it shall be decided by the High Court.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. (1) When a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the [1][Government,] a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without Jammu and Kashmir State) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in Jammu and Kashmir State, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by subordinate Magistrate.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such

1. Substituted *vide* Act XV of 2004 for "High Court". (For earlier amendment see Notification 3-I./85.)

warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of State Subject for offences committed out of State.

[1][**188.** When a State-Subject or State-servant (whether a State-Subject or not) commits an offence as mentioned in the Appendix to the Jammu and Kashmir State Extradition Rules No. iv of 1976 at any place without and beyond the limits of the State, he may be dealt with in respect of such offence as if it had been committed at any place within the State at which he may be found:

Provided that no charge as to any such offence shall be inquired into in the State where a demand for extradition has been received and unless the sanction of [2][the Government] is obtained:

Provided also that any proceedings taken against any person under this section which would be a bar to any subsequent proceedings against such person for the same offence if such offence had been committed in the State shall be a bar to further proceedings against him under the State Extradition Rules, 1976, in respect of the same offence in any territory beyond the limits of the State.]

189. Omitted.

B.—Conditions requisite for initiation of procecdings.

Cognizance of offences by Magistrates.

190. (1) Except as hereinafter provided, any District. Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence:—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a report in writing of such facts made by any police-officer;

1. Added *vide* Chief Minister's No. 7375, dated 28th August, 1933, published in Government Gazette, dated 19th Assuj, 1977.

2. See footnote under section 4.(1) (*a*).

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The [1][Government] may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The [1][Government] may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

Transfer or commitment on application of accused.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall before any evidence is taken be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

Transfer of cases by Magistrates.

192. (1) Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as [2][the Government] by general or special order may direct them to try, or, as the Sessions Judge of the division, by general or special order, may make over to them for trial.

1. Substituted *vide* Act XV of 2004 for "High Court". (For earlier amendment see notification 3-L/85.)

2. See footnote under section 4(1)(a).

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Cognizance of offences by High Court.

195. (1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 of the Ranbir Penal Code, except on a complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

Prosecution for contempt of lawful authority of public servants.

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged do have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a civil, revenue or criminal Court, but does not include a Registrar or Sub-Registrar under the Registration Act, 1977.

(3) For the purposes of this section, a Court, shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate :

Provided that,—

(*a*) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(*b*) where appeals lie to a civil and also to a revenue Court, such Court shall be deemed to be subordinate to the civil or revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

Prosecution for offences against the State.

196. No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code (except section 127, [1][and section 171-F, so far as it relates to the offence of personation])or punishable under section 108-A, or section 153-A, or section 294-A, or section 505 of the Ranbir Penal Code, unless upon complaint made by order of, or under authority from, [2][the Government] or some officer empowered by [2][the Government] in this behalf.

Prosecution for certain clauses of criminal conspiracy.

196-A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120-B of the Ranbir Penal Code,—

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order of, or under authority from, [2][the Government] or some officer empowered by [2][the Government] in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, life imprisonment or rigorous imprisonment for a term of two years or up-wards, unless [2][the Government], or District Magistrate empowered in this behalf by [2][the Government] has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub section (4) of section 195 apply, no such consent shall be necessary.

Preliminary inquiry in certain cases.

196-B. In the case of any offence in respect of which the provisions of section 196 or section 196-A apply, a District Magistrate may, notwithstanding anything contained in those sections or in any other

1. Inserted *vide* Act IV of 1957
2. See footnote under section 4 (1) (a).

part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

Prosecution of Judges and public servants.

197. (1) When any person who is a Judge within the meaning of section 19 of the Ranbir Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of [1][the Government], is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of [1][the Government].

Power of Government as to prosecution.

(2) [1][The Government] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation and offence against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Ranbir Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

Provided that where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf:

[2][Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of [3][the Armed Forces of Indian Union] [4][x x x] under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him, to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199-B may, with the leave of the Court, make a complaint on his behalf.]

1. See footnote under section 4 (1) (a).
2. Further proviso to section 198 added *vide* A III of 2001.
3. Substituted *vide* A.L.O. 2008 for "His Majesty's".
4. Words "or His Highness' armed forces" deleted *vide* Act X of 1310.

[1][198-A.—(1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Ranbir Penal Code, 1989 (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President or the Governor or Rajparmukh of a State or the Sadar-i-Riyasat of the State or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.

(2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,—

(*a*) in the case of the President or the Vice-President or the Governor or Rajparmukh of a State or the Sadar-i-Riyasat of the State, of any Secretary to the Government authorised by him in this behalf ;

(*b*) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned ;

(*c*) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned.

(4) No Court of Session shall take cognizance of an offence under sub-section (1), unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded otherwise directs, be examined as a witness for the prosecution.

1. Section 198-A inserted *vide* Act XLII of 1956.

(6) If in any case instituted under this section, the Court of Session by which the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court of Session may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Sadar-i-Riyasat of the State) to show cause why he should not pay compensation to such accused or to each or any of such accused, where there are more than one.

(7) The Court of Session shall record and consider any cause which may be shown by the person so directed and if it is satisfied that the accusation was false and either frivolous or vexatious, it may, for reasons to be recorded, direct that compensation to such amount, not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(8) All compensation awarded under sub-section (7) may be recoverd as if it were a fine.

(9) No person who has been directed to pay compesation under sub-section (7) shall, by reason of such order be exempted from any civil or criminal liability in respect of the complaint made under this section :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(10) The person who has heen ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

(11) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (10), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(12) The provisions of this section shall be in addition to and not in derogation of, those of section 198.]

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Ranbir Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court

Prosecution for adultery or enticing a married woman.

by some person who had care of such woman, on his behalf at the time when such offence was committed :

Provided that where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf:

[1][Provided further that where such husband is serving in any of [2][the Armed Forces of Indian Union] [3][x x x] under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199-B may, with the leave of the Court, make a complaint on his behalf.]

Objection by lawful guardian to complaint by person other than person aggrieved.

199-A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application give him a reasonable opportunity of objecting to the granting thereof.

Form of authorisation under second proviso to section 198 or 199.

[4][**199-B.** (1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the officer referred to in the said provisos and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

1. Further proviso to section 199 added *vide* Act VIII of 2001.
2. Substituted vide A.L.O. 2008 for "His Majesty's."
3. Words 'or His Highness' armed forces" deleted *vide* Act x of 2019.
4. Section 199-B added *vide* Act VIII of 2001.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.]

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once [1][examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses] and also by the Magistrate :

Examination of complainant.

Provided as follows—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;

(b) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties ;

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

Procedure by Magistrate not competent to take cognizance of the case.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

1. Substituted *vide* Act XLII of 1956 for certain words.

[1][**202.** (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

Postponement for issue of process.

Provided that no such direction shall be made—

(a) unless the complainant has been examined on oath under the provisions of section 200, or

(b) where the complaint has been made by a Court under the provisions of this Code.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(3) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant [2][and the witnesses] and the result of the investigation or inquiry (if any) under section 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Dismissal of complaint.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears

Issue of process.

1. Section 202 substituted *vide* Notification No. 13-L/84 published in Government Gazette dated 27th Magh, 1984.

2. Certain words inserted *vide* Act XLII of 1956.

to be one in which, according to the fourth column of the second Schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

[1][(1-a) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(1-b) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint].

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and if necessary, enforce such attendance in manner hereinbefore provided.

*CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. (1) Any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate (not being a Magistrate of the third class) empowered in this behalf by

Power to commit for trial.

1. Sub-sections (1-a) and (1-b) to section 204 added *vide* Act XLII of 1956.

*The procedure in this Chapter does not apply to the district of Ladakh where Session cases are tried by the Sessions Judge without commitment (*vide* Notification No. 23 dated 30th October, 1912), published in Government Gazette dated 27th Katik, 1969.

the [1][Government] may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court, unless [2][the Government] or the High Court directs the commitment of a case to the High Court.

[3][**207.** In every inquiry before a Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court, the Magistrate shall,—

Procedure in inquiries preparatory to commitment.

(*a*) in any proceeding instituted on a police report, follow the procedure specified in section 207—A; and

(*b*) in any other proceeding, follow the procedure specified in the other provisions of this Chapter,

207-A. (1) When, in any proceeding instituted on a police report, the Magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.

Procedure to be adopted in proceedings instituted on police report.

(2) If, at any time before such date, the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the

1. Substituted *vide* Act XV of 2004 for "High Court". (For earlier amendments see Acts X of 1996 and VI of 2002).
2. Substituted *vide* Act X of 1996 for "His Highness".
3. Sections 207 and 207-A substituted for original section 207 *vide* Act XLII of 1956.

prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interest of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.

(5) The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case the prosecutor may re-examine them.

(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an oportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(8) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

(9) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

Provided that the Magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial to the Court a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

(11) When the accused has given in any list of witnesses under sub-section (9) and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the Court to which the accused has been committed :

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Court and such witnesses may be summoned accordingly:

Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expenses of obtaining the attendance of the witness and all other proper expenses.

(12) Witnesses for the prosecution whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

(13) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

(14) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the officer appointed in this behalf by the High Court.

(15) Until and during the trial the Magistrate shall, subject to the provisions of this Code regarding the taking

of bail, commit the accused by warrant to custody.]

Taking of evidence produced.

208. (1) [1][In any proceeding instituted otherwise than on a police report the Magistrate shall], when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or on behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

Process for production of further evidence.

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Omitted.

When accused person to be discharged.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

1. Substituted *vide* Act XLII of 1956 for "The Magistrate shall".

(2) As soon as such charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained and copy furnished to accused.

211. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the proper officer a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

212. The Magistrate may, in his discretion, summon and exmine any witness named in any list given in to him under section 211.

Power of Magistrate to examine such witnesses.

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and shall also record briefly the reasons for such commitment.

Order of commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

214. Omitted.

215. A commitment once made under section 213 by a competent Magistrate or by a civil or revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Quashing commitments under section 213

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list,

Summons to witnesses for defence when accused is committed.

as have not appeared before himself, to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Registrar High Court and such witnesses may be summoned accordingly;

Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Refusal to summon unnecessary witness unless deposit made.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendnace before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by [1][the Government] in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Commitment when to be notified.

1. See footnote under section 4 (1) (a).

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the High Court.

charge, etc., to be forwarded to High Court or Court of Session.

(2) Omitted.

219. (1) The Committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

(2) Such examination shall, if possible be taken in the presence of the accused, and a copy of the evidence of such witnesses shall be givin to the accused free of cost.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged

How stated where offence has no specific name.

(4) The law and the section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) The charge shall be written in the language of the Court or in English if the Presiding Judge cannot write in the language of the Court.

Language of charge.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

Previous conviction when to be set out.

Illustrations.

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 302 of the Ranbir Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that if it did not fall within Exception I, one or other of the three provisos to that exception apply to it.

(*b*) A is charged, under section 326 of the Ranbir Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Ranbir Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or adultery, or criminal intimidation, or extortion, or that he used a false property-mark without reference to the definitions of those crimes contained in the Ranbir Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*) A is charged, under section 184 of the Ranbir Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of that matter with which he is charged.

Particulars as to time, place and person.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B, at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of error.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as

material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(*a*) A is charged, under section 242 of the Ranbir Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(*d*) A is charged with the murder of Khuda Baksh on the 21st January, 1882, in fact, the murdered person's name was Haidar Baksh and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khuda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khuda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

Illustrations.

(1) A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.

(2) A is charged with forging a valuable security under section 467 of the Ranbir Penal Code. A charge of fabricating false evidence under section 193 may be added.

(3) A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Ranbir Penal Code cannot be added.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials [1][by jury] before the Court of Session or High Court, before the verdict of the jury is returned [2][x x x].

Court may alter charge.

(2) Every such alteration or addition shall be read and explained to the accused.

228. If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When trial may proceed immediately after alteration.

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

When new trial may be directed, or trial suspended.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or resummon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Recall of witnesses when charge altered.

232. (1) If any appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of

Effect of material error.

1. Inserted *vide* Act, XLII of 1956.
2. Words "or the opinions of the assessors are expressed" Omitted *vide ibid.*

opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Ranbir Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within a year may be charged together.

234 (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Ranbir Penal Code or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Ranbir Penal Code shall be deemed to be an offence of the same kind as an offence

punishable under section 380 of the said Code and that an offence punishable under any section of the Ranbir Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Trial for more than one offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Offence falling within two definitions.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts.

Acts constituting one offence, but constituting when combined a different offence.

(4) Nothing contained in this section shall affect the Ranbir Penal Code, section 71.

Illustrations.

to sub-section (1)—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Ranbir Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife, A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Ranbir Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with and convicted of, offences under sections 498 and 497 of the Ranbir Penal Code.

(*d*) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Ranbir Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Ranbir Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding and also falsely accuses B of having committed an offence knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Ranbir Penal Code.

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Ranbir Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Ranbir Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Ranbir Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2)—

(i) A wrongfully strikes B with a cane. A may be separately charged with and convicted of offences under sections 352 and 323 of the Ranbir Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purposes of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Ranbir Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Ranbir Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Ranbir Penal Code. A may be separately charged with and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to sub-section (3)—

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Ranbir Penal Code,

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges, may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

(*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence,

When offence proved included in offence charged.

he may be convicted of the minor offence although he is not charged with it.

(2-a) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged,

(3) Nothing in this section shall be deemed to authorise a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Ranbir Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that, he did commit criminal breach of trust under section 406 in respect of the property but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged, under section 325 of the Ranbir Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of the Code.

What persons may be charged jointly.

239. The following persons may be charged and tried together, namely :—

(*a*) persons accused of the same offence committed in the course of the same transaction ;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;

(*c*) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months ;

(*d*) persons accused of different offences committed in the course of the same transaction ;

(*e*) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence ;

(*f*) persons accused of offences under sections 411 and 414 of the Ranbir Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; and

(*g*) persons accused of any offence under Chapter XII of the Ranbir Penal Code relating to counterfeit coin, and

persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;
and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Withdrawal of remaining charges on conviction on one of several charges.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Procedure when no such admission is made.

244. (1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Acquittal.

Sentence.

245. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Finding not limited by complaint or summons.

246. A Magistrate may, under section, 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Non-appearance of complainant.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he

thinks proper to adjourn the hearing of the case to some other day:

[1][Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.]

Withdrawal of complaint.

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous Accusations in Summons and Warrant-cases.

False, frivolous or vexatious accusations.

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may by his order of discharge or acquittal, if the person upon, whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that com-

1. Proviso substituted *vide* Act XLII of 1956.

pensation to such amount not exceeding [1][one-half of the fine he is empowered to impose], as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2-a) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2-b) When any person is imprisoned under sub-section (2-a), the provisions of sections 68 and 69 of the Ranbir Penal Code shall, so far as may be, apply.

(2-c) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

[2][**251.** In the trial of warrant cases by Magistrates, the Magistrate shall,—:

(*a*) in any case instituted on a police report, follow

1. Substituted for certain words *vide* Act XLII of 1956.
2. Section 251 substituted *vide* Act XLII of 1956.

the procedure specified in section 251-A ; and

(*b*) in any other case, follow the procedure specified in the other provisions of this Chapter.]

[1][**251-A.** (1) When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

Procedure to be adopted in cases instituted on police report.

(2) If, upon consideration of all the documents referred to in section 173 and making such examination if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(4) The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried.

(5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

(6) If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate shall fix a date for the examination of witnesses.

(7) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination.

(8) The accused shall then be called upon to enter upon his defence and produce his evidence ; and if the accused puts in any written statement, the Magistrate shall file it with the record.

1. Section 251-A inserted *vide* Act XLII of 1956.

(9) If the accused after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(10) The Magistrate may, before summoning any witness on such application under sub-section (9), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in Court.

(11) If, in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of section 349 or section 562 he shall, if he find the accused guilty, pass sentence upon him according to law.

(13) In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under sub-section (5) or sub-section (12), take evidence in respect of the alleged previous conviction and shall record a finding thereon.]

Evidence for prosecution.

252. (I) [1][In any case instituted otherwise than on a police report, when the accused appears] or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidnece as may be produced in support of the prosecution :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

1. Substituted *vide* Act XLII of 1956 for "when the accused appears,

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Discharge of accused.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused

Charge to be framed when offence appears proved.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

255-A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

Procedure in case of previous convictions.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after

Defence.

cross-examination and re examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for compelling production of evidence at instance of accused.

257. (1) If the accused, after he has entered upon his defence applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.

Absence of complainant.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. (1) Notwithstanding anything contained in this Code, —

(*a*) the District Magistrate,

(*b*) any Magistrate of the first class specially empowered in this behalf by the [1][Government,] and

(*c*) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the [1][Government,]

may, if he or they think fit, try in a summary way all or any of the following offences :—

(*a*) offences not punishable with death, life imprisonment or imprisonment for a term exceeding six months ;

(*b*) offences relating to weights and measures under sections 264, 265 and 266 of the Ranbir Penal Code ;

(*c*) hurt, under section 323 of the same Code ;

(*d*) theft, under section 379, 380 or 381 of the same Code, where the value of property stolen does not exceed [2][two hundred rupees] ;

(*e*) dishonest misappropriation of property, under section 403 of the same Code, where the value of the property mis-appropriated does not exceed [2][two hundred rupees] ;

(*f*) receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed [2][two hundred rupees] ;

(*g*) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed [2][two hundred rupees] ;

(*h*) mischief, under section 427 of the same Code ;

(*i*) house-trespass, under section 448 and offences under sections 451, 453, 454, 456 and 457 of the same Code ;

(*j*) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;

(*k*) abetment of any of the foregoing offences ;

(*l*) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(*m*) offences under section 20 of the Cattle-Trespass Act :

1. Substituted *vide* Act XV of 2004 for "High Court". (For earlier amendment see Notification 3-L/85).
2. Substituted *vide* Act XLII of 1956 for "fifty rupees"

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

261. [1][The Government] may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*) offences against the Ranbir Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504 ;

(*b*) offences against Jammu and Kashmir [2]Municipal Act, 1970, and the conservancy clauses of the Jammu and Kashmir Police Act which are punishable only with fine, or with imprisonment for a term not exceeding one month with or without fine ;

(*c*) abetment of any of the foregoing offences ;

(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant cases shall be followed in warrant-cases. except as hereinafter mentioned.

Procedure for summons and warrant cases applicable.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

Limit of imprisonment.

263 In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as [1][the Government] may direct the following particulars :—

Record in cases where there is no appeal.

(*a*) the serial number ;

1. See footnote under section 4 (1) (*a*).
2. Now Municipal Act (VIII of 2008).

(*b*) the date of the commission of the offence ;
(*c*) the date of the report or complaint ;
(*d*) the name of the complainant (if any) ;
(*e*) the name, parentage and residence of the accused ;
(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*), clause (*f*) or clause (*g*) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed ;
(*g*) the plea of the accused and his examination (if any) ;
(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
(*i*) the sentence or other final order ; and
(*j*) the date on which the proceedings terminated.

Record in appealable cases.

[1][**264.** In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case.]

Language of record and judgment.

265. (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk.

(2) [2][The Government] may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member o such Bench present taking part in the proceedings.

(3) If no such authorisation be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

---

1. Section 264 substituted *vide* Act XLII of 1956.
2. See footnote under section 4 (1) (*a*)

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURT AND COURTS OF SESSION.

A.—Preliminary.

266. Omitted.

267. Omitted.

[1][**268.** All trials before a Court of Session shall be either by jury or by the Judge himself.]

Trials before Court of Session.

[2][**269.** (1) The Government may by order in the Jammu and Kashmir Government Gazette, direct that the trial of all offences, or of any particular class of offences, before the High Court or any Court of Session, shall be by jury, and may revoke or alter such order.

The Government may order trial before High Court and Court of Session to be by jury.

(2) The Government, by like order may also declare that, in the case of any offence or offences in which the trial is to be by jury, the trial of such offence or offences shall, if the Judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and [3][by the Judge himself] for such of them as are not triable by jury.]

[4][(4) When, in respect of a trial in which the accused is charged with an offence triable by jury, it appears to the High Court, on an application made to it or otherwise, that having regard to the volume or complexity of the evidence in the case, the trial is not likely to be concluded within two weeks from its commencement, or that the case would involve consideration of evidence of a highly technical nature, which renders it undesirable that

1. Section 268 substituted *vide* Act XLII of 1956.
2. Section 269 inserted *vide* Act III of 2003.
3. Substituted *vide* Act XLII of 1956 for "by the High Court or a Court of Session, with the aid of jurors as assessors".
4. Sub-section (4) of section 269 inserted *vide ibid.*

it should be tried by a jury, the High Court may, notwithstanding anything contained in any order made under sub-section (1), by order, direct that that case shall be tried by the Judge himself without a jury and the Judge shall proceed to try the case accordingly.]

Trials before Court of Session to be conducted by Public Prosecutor.

270. In every trial before the High Court or a Court of Session the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

Commencement of trial

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried.

[1][**272.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall, in a case triable by jury, proceed to choose jurors as hereinafter directed and to try the case, but in any other case, the Judge shall proceed to try the case himself :

Provided that in cases triable by jury, the same jury may, subject to the right of objection hereinafter mentioned, try as many accused persons successively as the Court thinks fit.]

Entry on unsustainable charges.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

1. Section 272 substituted *vide* Act XLII of 1956.

C.—Choosing a Jury.

[1][**274.** (1) In trials before the High Court the jury shall consist of nine persons.

Number of jury.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than [2][seven] or more than nine, as the Government, by order applicable to any particular class of offences, may direct :

Provided that where any accused person is charged with an offence punishable with death, the jury [3][shall consist, if practicable, of nine persons].

275. Omitted.

[1][**276.** The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct :

Jurors to be chosen by lot.

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of assessors shall be allowed, in choosing the jurors;

secondly, in case of deficiency of a persons summoned, the number of jurors requried may, with the leave of the Court, be chosen from such other persons as may be present ;

thirdly, in a trial before the High Court,

(*a*) if the accused is charged with having committed an offence punishable with death; or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and

fourthly, if the Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

277. (1) As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

(2) Objections may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection

1. Sections 274 and 276 to 283 inserted *vide* Act III of 2003.
2. Substituted *vide* Act XLII of 1956 for "five"
3. Substituted *vide ibid* for "shall consist of not less than seven persons and if Practicable of nine persons."

shall be stated :

Provided that in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the State and eight on behalf of the person or all the persons charged.

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

(*a*) some presumed or actual partiality in the juror :

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law any or rule having the force of law for the time being in force, or being under the age of twenty one or above the age of sixty years ;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs ;

(*d*) his holding any office in or under the Court ;

(*e*) his executing any duties of police or being entrusted with police duties ;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;

(*g*) his inability to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted ;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as juror.

Decision of objection.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury :

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(2) The foreman shall preside in the debates of jury, deliver the verdict of jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Judicial Oaths Rules, 1950.

Procedure when juror ceases to attend, etc.

[1][**282.** (1) If, in the course of a trial by jury at any time before the return of the verdict ,—

(*a*) any juror, from any sufficient cause, is prevented from attending the trial on any day, or

(*b*) if any juror absents himself and it is not practicable to enforce his attendance, or

(*c*) if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted,

the Court, in any case falling under clause (*a*), may either adjourn the trial or discharge the juror and in any case falling under clause (*b*) or clause (*c*), shall discharge the juror; and in any case where any juror is so discharged, the jury shall be deemed to be reconstituted with the remaining jurors as if the jury had consisted of such persons only from the commencement of the trial and the trial shall proceed before the jury so reconstituted ; and notwithstanding anything contained elsewhere in this Code, such trial shall not be invalid by reason only of the fact that the number of persons originally constituting the jury has been reduced.

(2) Notwithstanding anything contained in sub-section (1), if, in the course of a trial by jury, the number of persons constituting the jury is so reduced that—

(*a*) when the jury originally consisted of nine persons, it falls below seven, or

(*b*) when the jury originally consisted of seven persons, it falls below five,

the jury shall be discharged and a new jury chosen, and in each of such cases, the trial shall commence anew.]

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.]

1. Section 282 substituted *vide* Act XLII of 1956.

D.—Choosing Assessors.

[1]**284.** Omitted.

[1]**285.** Omitted.

E.—Trial to Close of Cases for Prosecution and Deffence.

Opening case for prosecution.

286. (1) [2][In a case triable by jury, when the jurors have been chosen or, in any other case, when the Judge is ready to hear the case], the prosecutor shall open his case by reading from the Ranbir Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

(2) The prosecutor shall then examine his witnesses.

Examination of Witnesses.

Examination of accused before Mugistrate to be evidence.

287. The examination of the accused, [3][if any], recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1977.

Procedure after examination of witnesses for prosecution.

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then record a finding.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, record a finding.

(4) If the accused, or any one of several accused, says

1. Sections 284 and 285 omitted *vide* Act, XLII of 1956.
2. Substituted *vide ibid* for "When jurors or assessors have been chosen".
3. Substituted *vide* Act XLII of 1956 for "duly."

that he means to adduce evidence, and the Court considers that there is evidence, that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance ; but he shall not, except as provided in sections [1][207-A], 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

292. The prosecutor shall be entitled to reply—

(*a*) if the accused or any of the accused adduces any oral evidence ; or

(*b*) with the permission of the Court, on a point of law ; or

(*c*) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence :

Provided that in the case referred to in clause (*c*) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.

View by jury.

293. (1) Whenever the Court thinks that the [2][jury[3](x)] should view the place in which the offence charged is alleged to have been committed or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the [2][jury[3](x)x] shall be conducted in a body, under the care of an officer of the Court,

1. Inserted *vide* Act XLII of 1956.
2. Words "Jury or" Inserted *vide* Act III of 2003.
3. Words "or assessors" omitted *vide* Act XLII of 1956.

to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the [1][jury[2](x)], and unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror may be exmained.

294. If [3][a juror[2][x]] is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury to attend at adjourned sitting.

295. If a trial is adjourned, the [1][jury[4][x]x] shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking of jury.

[5][**296.** The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and subject to such rules, the presiding Judge may order whether or in what manner the jurors shall be kept together, under the charge of an officer of the Court or whether they shall be allowed to return to their respective homes.

F—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided [4][and the charge to the jury shall, wherever practicable, be taken down in shorthand in the language in which it is delivered and a transcript thereof signed by the Judge shall form part of the record].

Duty of Judge.

298. (1) In such cases it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course

1. Inserted *vide* Act III of 2003.
2. Words "or assessors" omitted *vide* Act XLII of 1956.
3. Substituted *vide* Act III of 2003 for "an assessor."
4. words "or assessors" omitted *vide* Act XLII of 1956.
5. Sections 296 to 308 inserted *vide* Act III of 2003.
6. Certain words inserted *vide* Act XLII of 1956.

of, the trial and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial ;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given ;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, revelant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;

(*c*) to decide all questions which according to law are to be deemed questions of fact ;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertainde by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point – whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror, shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority [1][or that the jurors are equally divided in opinion].

Procednre where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous [1][or the foreman may inform the Judge that the jurors are still equally divided in opinion].

Verdict to be given on each charge. Judge may question jury.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Such questions and the answers to them shall be recorded.

1. Inserted *vide* Act XLII of 1956.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in the High Court when to prevail.

305. (1) When in a case tried before the High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the laps of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. (1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

[1][(1-a) if, in any such case, the jurors are equally divided

1. Sub-section 1-a) of section 307 inserted *vide* Act XLII of 1956.

in opinion on all or any of the charges on which any accused person has been tried, the Judge shall submit the case in respect of such accused person to the High Court recording his opinion on such charge or charges and the grounds of his opinion, and in such case, if the accused is further charged under the provisions of section 310, he shall proceed to try him on such charge as if the verdict of the jury had been one of conviction.]

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G—Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be retried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal].

Retrial of accused after discharge of jury.

H.—Conclusion of trial in cases tried by the Judge himself.

[1][**309** (1) When, in a case tried by the Judge himself the case for the defence and the prosecutor's reply (if any) are concluded, the Judge shall give a judgment in the case

Judgment in cases tried by the Judge himself.

(2) If the accused is convicted the Judge shall, unless he proceeds in accordance with the provisions of section 562, pass sentence on him according to law.]

1. Sub-head and section 309 substituted *vide* Act XLII of 1956.

to ascertain what their opinions are. All such questions and the answers to them shall be recorded.

Judgment.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 562 pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction

Procedure in case of previous conviction.

310. In the case of a trial [1][by jury [2][or by the Judge himself]] when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely : —

(*a*) such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until—

(i) he has been convicted of the subsequent offence, or

[3][(ii) in the case of a trial by a jury, the jury have delivered their verdict on the charge of the subsequent offence];

(*b*) in the case of a trial [4][held by the Judge himself] the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.

When evidence of previous conviction may be given.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Evidence Act, 1977.

1. Substituted *vide* Act III of 2003 for "with the aid of assessors".
2. Substituted *vide* Act XLII of 1956 for "or with the aid of assessors".
3. Sub-clause (ii) of clause (a) of section 310 substituted *vide* Act XLII of 1956. [For earlier amendment see Act III of 2003.]
4. Substituted *vide* Act XLII of 1956 for "held by jury or with the aid of assessors". [For earlier amendment see Act III of 2003.]

J.—List of Jurors for High Court, and summoning Jurors for High Court.

[1][**312.** The High Court may prescribe the number of persons whose names shall be entered at any one time in special jurors' list.

Number of special jurors.

313. (1) The Registrar of the High Court shall, before the first day of Chet each year, and subject to such rules, as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors ; and

(*b*) a list of all persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for previous year.

(4) The Government may exempt any salaried public servant from serving as a juror.

(5) The decision of the Registrar in preparing such list shall be final.

314. (1) Preliminary lists of persons liable to serve as common jurors and special jurors, respectively, signed by Registrar, shall be published in the Government Gazette before the fifteenth day of Chet next after their preparation.

Publication of lists, preliminary and revised.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid shall be published once in the Government Gazette before the first day of Baisakh next after their preparation.

(3) Copies of the said lists shall be affixed to conspicuous parts of the court-house at Jammu and Srinagar.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session as many of those who are liable to serve on special or common

Number of jurors to be summoned.

1. Sections 312 to 318 inserted *vide* Act III of 2003.

juries respectively as the Registrar of the High Court considers necessary.

(2) No person shall be summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such session.

Summoning jurors outside the place of sitting of High Court.

316. Whenever the High Court has given notice of its intention to hold sittings at any place outside Jammu and Srinagar for the exercise of its original criminal jurisdiction, the Court of Session, at such place shall, subject to any direction which may be given by the High Court, summon the sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and noncommissioned officers in the Army resident within ten miles of its place of sitting as the Court considers necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code ; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason

Failure of jurors to attend.

318. Any person summoned under section 315, 316 or 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit ; and, in default of payment of such fine, to

imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.]

K.—List of Jurors for Court of Session, and summoning Jurors for that Court.

Liability to serve as jurors.

319. All [1][x x] persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve [2][as jurors [3][x x]] at any trial held within the district in which they reside, or, if [4][the Government], on consideration of local circumstances, have fixed any smaller area in this behalf, within the area so fixed.

Exemptions.

320. The following persons are exempt from liability to serve [2][as jurors [3][x x]], namely : —

(*a*) officers in civil employ superior in rank to a District Magistrate ;

(*b*) salaried Judges ;

(*c*) Commissioners and Collectors of Revenue or Customs ;

(*d*) police-officers and persons engaged in the Preventive Service in the Customs Department ;

(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;

(*f*) persons actually officiating as priests or ministers of their respective religions ;

(*g*) persons in [5][the Army,] except when, by any law in force for the time being, they are specially made liable to serve [2][as jurors [3][x x]] ;

(*h*) surgeons and others who openly and constantly practise the medical profession ;

(*i*) legal practitioners (as defined by the Legal Practitioners Act, 1977), in actual practice ;

1. Word "male" omitted *vide* Act XLII of 1956.
2. Substituted *vide* Act III of 2003 for ' as assessors".
3. Words "or assessors" omitted *vide* Act XLII of 1956.
4. See footnote under section 4 (1) (*a*).
5. Substituted *vide* Act X of 2010 for "His Highness' Army."

(j) persons employed in the Post-Office and Telegraph Departments ;

(k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, [1]sections 640 and 641 ;

(l) other persons exempted by [2][the Government] from liability to serve [3][as jurors [4][x x].

List of jurors.

321. (1) The Sessions Judge, and the Collector of the district or such other officer as [2][the Government] appoints in this behalf shall prepare and make out in alphabetical order a list of persons liable to serve [3][as jurors [4][x x]] and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such.

(2) The list shall contain the name, place of abode and quality or business of every such person.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

Objections to list.

323. To every such copy or extract shall be sub-joined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice.

Revision of list.

324. (1) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as [5][a juror[6][x x]] or who may establish his right to any exemption from service given by section 320 and insert the name of any person omit-

1. Sections 132 and 133 of the Code of Civil Procedure, 1977.
2. See footnote under section 4 (1) (*a*).
3. Substituted *vide* Act III of 2003 for "or assessors".
4. Words "or assessors" omitted *vide* Act XLII of 1956.
5. Substituted *vide* Act III of 2003 for "an assessor".
6. Words "or an assessor" omitted *vide* Act XLII of 1956.

ted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed [1][juror [2][x x]] shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

(6) The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

[3][**325.** The Sessions Judge and the Collector or other officer as aforesaid shall prepare, in addition to the revised list hereinafter prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors :

Preparation of list of special jurors.

Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.]

326. (1) The High Court or the Sessions Judge shall ordinarily, seven days at least before the day which it or he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as

District Magistrate to summon jurors.

1. Substituted *vide* Act III of 2003 for "assessor".
2. Words "or assessor" omitted *vide* Act XLII of 1956.
3. Section 325 inserted *vide* Act III of 2003.

seem to the Sessions Judge to be needed [1][for trials by jury [2][x x]] at the said sessions, the number to be summoned not being less than double the number required for any such trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them ; and the names so drawn shall be specified in the said letter.

Power to summon another set of jurors.

327. The High Court or the Court of Session may direct [3][jurors [4][x] x] to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of [3][jurors [4][x] x] for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

Form and contents of summons.

328. Every summons to [5][a juror [6][x x]] shall be in writing, and shall require his attendance as [5][a juror [7][x] x], at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. When any person summoned to serve as [5][a juror [6][x x]] is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as [5][a juror [7][x x]], without inconvenience to the public.

Court may excuse attendance of juror.

330. [8][(1)] The Court of Session may, for reasonable cause, excuse [9][any juror [6][x x]] from attendance at any particular session.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

[8][(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by a special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.]

1. Substituted *vide* Act III of 2003 for "for trials with the aid of assessors".
2. Words "and trials with the aid of assessors" omitted *vide* Act XLII of 1956.
3. Words "jurors or" inserted *vide* Act III of 2003.
4. Words "or assessors" omitted *vide* Act XLII of 1956.
5. Substituted *vide* Act III of 2003 for "an assessor".
6. Words "or assessor" omitted *vide* Act XLII of 1956.
7. Words "or assessor, as the case may be," omitted *vide* Act XLII of 1956.
8. Section 330 numbered as sub-section (1) of that section and sub-section (2) inserted *vide* Act III of 2003.
9. Substituted *vide ibid* for "any assessor".

List of jurors attending

331. (1) At each sitting of High Court or session, the Court shall cause to be made a list of the names of those who have attended [1][as jurors [2] x x] in the High Court or at such session.

(2) Such list shall be kept with the list of [3][the jurors [2][x] x] as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror.

332. (1) Any person summoned to attend as [4][a juror [5][x]x] who, without lawful excuse, fails to attend as required by summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court, High Court or Court of Session, to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any movable property belonging to such [6]juror [7][x]x] within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such [6][juror [7][x]x] may, by order of the High Court or Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—*Special Provisions for High Court.*

Power of Advocate General to stay prosecution.

[8][**333.** At any stage of any trial before the High Court under this Code, before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of the State that he will not further prosecute the defendent upon the charge, and thereupon all proceedings on such

1. Substituted *vide* Act III of 2003 for "as assessors".
2. Words "and assessors" omitted *vide* Act XLII of 1956.
3. Words "the jurors and" added *vide* Act III of 2003.
4. Words "a juror or as" added *vide* Act III of 2003.
5. Words "or as an assessor" omitted *vide* Act XLII of 1956.
6. Words "juror or" inserted *vide* Act III of 2003.
7. Words "or assessor" omitted *vide* Act XLII of 1956.
8. Section 333 inserted *vide* Act III of 2003.

charge against the defendent shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.]

Time of holding sittings.

334. For the exercise of the original criminal jurisdiction, the High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335 The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as [1][the Government] may direct.

336. Omitted.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337 (1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment [2][which may extend to seven years], or any offence under any of the following sections of the Ranbir Penal Code, namely, sections [3][161, 165,] 216-A, 369, 401, 435 and 477-A, the District Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or enquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure ot the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the

1. See footnote under section 4 (1)(a).
2. Substituted *vide* Act XLII of 1956 for certain words.
3. Inserted *vide ibid.*

Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(1-a) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2-a) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.

(3) Such person, unles he is already on bail, shall be detained in custody until the termination of the trial.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. (1) Where a pardon has been tendered under section 337 or section 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter :

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court

339-A. (1) The Court trying under section 339 a person who has accepted a tender of pardon shall —

Procedure in trial of person under section 339.

(*a*) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(*b*) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

340. (1) Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High

Procedure where accused does not understand proceedings.

Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Power to examine the accused.

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them : but the Court may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

[1][(4) No oath shall be administered to the accused when he is examined under sub-section (1).]

Accused person to be competent witness.

[2][**342-A.** Any person accused of an offence before a criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that

(*a*) he shall not be called as a witness except on his own request in writing ; or

(*b*) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.]

1. Section 342 (4) substituted *vide* Act XLII of 1956.
2. Section 342-A inserted *vide ibid*.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

344. [1][(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.]

Power to postpone or adjourn proceedings.

[1][(1-a)] If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

Remand.

[2][Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.]

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

EXPLANATION.— If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

345. (1) The offences punishable under the sections of the Ranbir Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Compounding offences.

1. Section 344 (1) re-numbered as sub-section (1-a) of that section and sub-section (1) inserted *vide* Act XLII of 1956.
2. Further proviso added *vide* Act XLII of 1956.

Offence.	Sections of the Ranbir Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person ..	298	The person whose religious feelings are intended to be wounded.
Causing hurt ..	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person ..	341, 342	The person restrained or confined.
Assault or use of criminal force .	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour .	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ..	447	The person in possession of the property trespassed upon.
House-trespass ..	448	
Criminal breach of contract of service ..	490, 491, 492	The person with whom the offender has contracted.

Offence.	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded.
Adultery ..	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman ..	498	
Defamation ..	500	The person defamed,
Printing or engraving matter, knowing it to be defamatory .	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter . .	502	
Insult intended to provoke a breach of the peace ..	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years ..	506	The person intimated.
Act caused by making a person believe that he will be an object of divine displeasure. ..	508	The person against whom the offence was committed.

(2 The offences punishable under the sections of the Ranbir Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table: —

Offence.	Sections of the Ranbir Penal Code applicable.	Persons by whom offence may be compounded.
[1][Voluntarily causing hurt by dangerous weapons or means	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt ..	325	,,
Voluntarily causing grievous hurt on grave and sudden provocation ..	335	,,
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others ..	337	,,
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others ..	338	,,
Wrongfully confining a person for three days or more ...	343	The person confined.

1. Substituted *vide* Act XLII of 1956 for the former table.

Offence.	Sections of the Ranbir Penal Code applicable.	Persons by whom offence may be compounded.
Wrongfully confining for ten or more days ..	344	The person confined.
Wrongfully confining a person in secret ...	346	,,
Assault or criminal force in attempting wrongfully to confine a person	357	The person assaulted or to whom the force was used.
Theft, where the value of property stolen does not exceed two hundred and fifty rupees ..	379	The owner of the property stolen
Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed two hundred and fifty rupees ..	381	,,
Dishonest misappropriation of property ..	403	The owner of the property misappropriated.
Criminal breach of trust, where the value of the property does not exceed two hundred and fifty rupees ..	406	The owner of the property in respect of which the breach of trust has been committed.

Offence.	Sections of the Ranbir Penal Code applicable	Persons by whom offence may be compounded.
Criminal breach of trust by a carrier, wharfinger, etc., where the value of the property does not exceed two hundred and fifty rupees ..	407	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a clerk or servant, where the value of property does not exceed two hundred and fifty rupees ..	408	,,
Cheating ..	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect ..	418	,,
Cheating by personation ..	419	,,
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security ...	420	,,
Fraudulent removal or concealment of property, etc, to prevent distribution among creditors ..	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender ..	422	,,

Offence.	Sections of the Ranbir Penal Code applicable.	Persons by whom offence may be compounded.
Fraudulent execution of deed or transfer containing false tatement of consideration ..	423	The person affected thereby.
Fraudulent removal or concealment of property ..	424	"
Mischief by killing or maiming animal of the value of ten rupees or upwards ..	428	The owner of the animal.
Mischief by killing or maiming cattle, etc., of any value or any other animal of the value of fifty rupees or upwards ..	429	The owner of the cattle or animal
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person ...	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment ..	451	The person in possession of the house trespassed upon.
Using a false trade or property mark	482	The person to whom loss or injury is caused by such use.

Offence.	Sections of the Ranbir Penal Code applicable.	Persons by whom offence may be compounded.
Counterfeiting a trade or property mark used by another ...	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark ...	486	The person whose trade or property mark is counterfeited.
Marrying again during the life-time of a husband or wife ...	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman ...	509	The woman whom it was intended to insult or whose privacy was intruded upon.]

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any, person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(5-a The High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

347. (1) If, in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348 (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Ranbir Penal Code with imprisonment for a term of three years or upwards, is again accused of any

offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused, be committed to the Court of Session or High Court, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that if any Magistrate in the district has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(1-a) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

350. (1 Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself :

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

[1][Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any. as he may permit, the witness shall be discharged.]

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346, or in which proceedings have been submitted to a superior Magistrate under section 349.

(3 When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1 .

350-A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.

Changes in constitution of Benches.

351 (1) Any person attending a criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

1. Substituted *vide* Act XLII of 1956 for certain words at the end of section 350 (1) and the former proviso". [For earlier amendment see Act XIV of 1993.]

Courts to be open.

352. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of an inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Manner of recording evidence.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases and in trials of certain offences by first and second class Magistrates.

355. (1) In summons-cases tried before a Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be

made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

Record in other cases.

356. (1) In all other trials before Courts of Session and Magistrates, and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing [1][in the language of the Court either by the Magistrate or Sessions Judge, with his own hand or from his dictation in open Court] or in his presence and hearing and under his personal direction and superintendence and [2][the evidence so taken down shall be signed by the Magistrate or Sessions Judge and shall form part of the record].

Evidence given in English

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand [3][or cause it to be taken down in writing in that language from his dictation in open Court], and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(2-a) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

(3) [4][In cases in which the Magistrate or Sessions Judge does not either take down the evidence with his own hand or cause it to be taken down in writing from his dictation in open Court,] he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented

1. Substituted *vide* Act XLII of 1956 for "in the language of the Court by the Magistrate or Sessions Judge".
2. Substituted *vide ibid* for "shall be signed by the Magistrate or Sessions Judge".
3. Inserted *vide ibid*.
4. Substituted *vide* Act XLII of 1956 for "In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge".

from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. (1) [1][The Government] may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that [1][the Government] may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he hinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate [1][the Government] has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the

1. See footnote under section 4 (I) (a).

evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his pleader.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. Omitted.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him, in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the exami-

nation was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Record of evidence in High Court.

365. The High Court shall, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. (1) The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

(*a*) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(*b*) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Language of judgment. Contents of judgment.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Ranbir Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

(3) When the conviction is under the Ranbir Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

[1][(5) In trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury:

Provided that it shall not be necessary to record such heads of the charge in cases where the charge has been delivered in English and taken down in shorthand.]

(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.

Sentence of death.

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

1. Section 367 (5) substituted *vide* Act XLII of 1956.

[1](2) Omitted.

369. Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of the High Court, by the constitution of High Court, no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

Court not to alter judgment.

370. Omitted.

371. (1) On the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

Copy of judgment, etc., to be given to accused on application.

(2) When the accused is sentenced to death [2][or imprisonment for life] by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death or life imprisonment.

[3][(3) When the accused is sentenced to imprisonment, then, without prejudice to the provisions of sub-section (1), a copy of the finding and sentence shall, as soon as may be after the delivery of the judgment, be given to the accused free of cost.]

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Judgment when to be translated.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of finding and sentence to District Magistrate.

---

1. Section 368 (2) omitted *vide* Act XLII of 1956.
2. Inserted *vide* Law Department Notification No. 7-L/86 published in Government Gazette dated 14th Bhadon, 1986.
3. Sub-section (3) of section 371 inserted *vide* Act XLII of 1956.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

[1][**374**. When the Court of Session passes sentence of death or life imprisonment, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.]

Power to direct further inquiry to be made or additional evidence to be taken.

375. (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made nor shall such evidence be taken in the presence of [2][jurors], and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. [3][In any case submitted under section 374, the High Court]—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge [4][x x x x]; or

(c) may acquit the accused person :

1. Section 374 substituted *vide* A. L. O. 2008.
2. Substituted *vide* Act XLII of 1956 for "assessors".
3. Substituted *vide* A. L. O. 2008 for "In any case submitted under section 374, His Highness-"
4. Words "or order further enquiry and taking of additional evidence" deleted *vide* Act XXV of 2011.

[1][Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.]

[1][x x x x x]

377. Omitted.

Procedure in case of difference of opinion.

[2][**378**. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be heard by a Full Bench and the judgment or order shall follow the opinion of the Full Bench or of the majority of the Full Bench.]

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, or life imprisonment, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by [3][the High Court,] send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

Procedure in cases submitted by Magistrate not empowered to act under section 562.

380. Where proceedings are submitted to a Magistrate of the fist class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

---

1. First proviso to section 376 substituted and second proviso deleted *vide* Act XXV of 2011, [For earlier amendments see Acts XIII of 2001 and X of 2010].
2. Section 378 substituted *vide* A. L. O. 2008.
3. Substituted *vide* A. L. O. 2008 for "His Highness".

CHAPTER XXVIII.

OF EXECUTION.

[1][**381** When a sentence of death or life imprisonment passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.]

Execution of order passed under section 376.

382. If a woman sentenced to death is found to be pregnant, [2][the Government] shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

Postponement of capital sentence on pregnant woman.

383. Where the accused is sentenced to life imprisonment or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Execution of sentences of life imprisonment or imprisonment in other cases.

384 Every warrant for the execution of a sentence of imprisonment, shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged.

386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

Warrant for levy of fine.

(*a*) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender ;

1. Section 381 substituted *vide* A. L. O. 2008.
2. See footnote under section 4 (l) (*a*).

(*b*) issue a warrant to the Collector of the district authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter :

Provided that if the sentence directs that in default of payment of fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) [1][The Government] may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Purocedure, 1977, and the nearest civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Effect of such warrant.

387. A warrant issued under section 386, sub-section (1), clause (a), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the attachment and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

Warrant for levy of fine issued by Courts in India outside Jammu and Kashmir State.

[2][**387-A.** Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a criminal Court in India outside the Jammu and Kashmir State and the Court passing the sentence issues a

1. See footnote under section 4 (1) (*a*).
2. Section 387-A inserted *vide* Act XL of 2011.

warrant to the Collector of a District in the territories to which this Code extends authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 386 by a Court in the territories to which this Code extends and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.]

Suspension of execution of sentence of imprisonment.

388. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made ; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith ; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentenee, or by his successor in office.

390. When the accused is sentenced to whipping only, the sentence shall subject to the provisions of section 391 be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

391. When the accused—

Execution of sentence of whipping, in addition to imprisonment.

(*a*) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(*b*) is sentenced to whipping in addition to imprisonment,

the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

392. (1) In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person as [1][the Government] directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as [1][the Government] directs.

Mode of inflicting punishment.

(2) In no case shall such punishment exceed thirty stripes [2][and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes].

Limit of number of stripes.

1. See footnote under section 4 (1) (a).
2. Added *vide* Notification No. 9-L/83 published in Government Gazette dated 18th Sawan, 1983.

393. No sentence of whipping shall be executed by instalments, and none of the following persons shall be punishable with whipping, namely :

Not to be executed by instalment. Exemptions.

(*a*) females ;

(*b*) males sentenced to death or to life imprisonment, or to imprisonment for more than five years ;

(*c*) males whom the Court considers to be more than forty-five years of age.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. (1) In any case in which, under section 394, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it ; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months or to a fine not exceeding five hundred rupees which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicated under section 394.

(2) Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, [1][imprisonment for life], fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment

Execution of sentences on escaped convicts.

1. Inserted *vide* Act XLII of 1956.

[1][x x], shall take effect according to the following rules, that is to say,—

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment [2][x x x] for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section,—

[3](*a*) Omitted.

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

[4][**397.** (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence :

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.]

1. Words "for life" omitted *vide* Act XLII of 1956.
2. Words "or life imprisonment, as the case may be," omitted *vide ibid.*
3. Clause (a) omitted *vide ibid.*
4. Section 397 substituted *vide ibid.*

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections 396 and 397.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment,[1][x x x x] for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, [2][x x x] effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399. (1) When any person under the age of fifteen years is sentenced by any criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by [3][the Government] as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as [3][the Government] prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories.

(2) All persons confined under this section shall be subject to the rules so prescribed.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, [4][the Sadar-i-Riyasat] may at any time without conditions or upon any conditions which the person

Power to suspend or remit sentences.

1. Words "or to a sentence of life imprisonment" omitted *vide* Act XLII of 1956.
2. Words "or life imprisonment" omitted *vide* Act XLII of 1956.
3. See footnote under section 4 (1) (*a*).
4. Substituted *vide* Act X of 2010 for "His Highness".

sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to [1][the Sadar-i-Riyasat] for the suspension or remission of a setnence, [1][the Sadar-i-Riyasat] may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion the record of the trial.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of [1][the Sadar-i-Riyasat] not fulfilled, he may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4-a) The provisions of the above sub-sections shall also apply to any order passed by a criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of [1][the Sadar-i-Riyasat] to grant pardons, reprieves, respites or remissions of punishment.

(5-a) Where a conditional pardon is granted by [1][the Sadar-i-Riysat] any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The [1][Sadar-i-Riyasat] may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with :

[2][Provided that in the case of any sentence (other than a sentence of fine or whipping) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(*a*) where such petition is made by the person sentenced

1. Substituted *vids* Act X of 2010 for "His Highness".
2. Proviso to sub-section (6) of section 401 added *vide* Act XLII of 1956.

it is presented through the officer in charge of the jail ; or

(*b*) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.]

Power to commute punishment.

402. (1) [1][The Sadar-i-Riyasat] may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, life imprisonment, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Ranbir Penal Code.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any

1. Substituted *vide* Act X of 2010 for "His Highness".

other offence constituted by the same acts, which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1977, or section 188 of this Code.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

404. No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order made by any Magistrate, to the Court of Sessions :

Appeal from order requiring security for keeping the peace or for good behaviour.

[1][x x x x x]

Provided [2][x] that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3-a) of section 123.

406-A. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order, —

Appeal from order refusing to accept or rejecting a surety.

(*a*) Omitted ;

(*b*) if made by the District Magistrate, to the Court of Session ; or

(*c*) if made by a Magistrate, other than the District Magistrate, to the District Magistrate.

[3]**407.** Omitted.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or [4][any other Magistrate] or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 [5][by any

Appeal from sentence of Assistant Sessions Judge or any other Magistrate.

1. First proviso of section 406 omitted *vide* Act XLII of 1956.
2. Word "further" omitted *vide ibid.*
3. Section 407 omitted *vide ibid.*
4. Substituted *vide ibid* for "other Magistrate of the first class".
5. Substituted *vide ibid* for "by a Magistrate of the first class".

Magistrate], may appeal to the Court of Session :

Provided as follows :—

(*a*) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, the appeal of all or any of the accused convicted at such trial shall lie to the High Court ;

(*b*) when any person is convicted by a Magistrate of an offence under section 124-A of the Ranbir Penal Code, the appeal shall lie to the High Court.

[1][**409**. (1) Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge :

Appeals to Courts of Session how heard.

Provided that no such appeal shall be heard by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by any Magistrate of second or third class.

(2) An additional Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.]

410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

Appeal from sentence of Court of Session.

411. Omitted.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Sessions or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleaded guilty.

1. Section 409 substituted *vide* Act XLII of 1956.

413. Notwithstanding anything hereinbefore contained, there shall be only one appeal by a convicted person in cases in which [1][a District Magistrate or other Magistrate of the first class passes sentence of imprisonment for a term not exceeding six months or a fine not exceeding two hundred rupees, or both].

Appeal in petty cases.

EXPLANATION. —There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only.

No appeal from certain summary convictions.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

415-A. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

Special right of appeal in certain cases.

416. Omitted.

[2][**417.** (1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court

Appeal in case of acquittal.

1. Substituted *vide* Corrigenda published in Government Gazette dated 5th Har, 1993.
2. Section 417 substituted *vide* Act XLII of 1956.

other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grant-special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).]

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law.

EXPLANATION.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper appellate Court.

Summary dismissal of appeal.

421. (1) On receiving the petition and copy under section 419 or section 420, the appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the

Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

422. If the appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as [1][the Government] may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the ground of appeal;

and, in cases of appeals under section 417, the appellate Court shall cause a like notice to be given to the accused.

Powers of appellate Court in disposing of appeal.

423. (1) The appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retired or commited for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) make any amendment or any consequential or incidental order that may be just or proper.

[2][(1-a) Where an appeal from a conviction lies to the High Court, it may enhance the sentence, notwithstanding

1. See footnote under section 4 (1) (a).
2. Sub-seciton (1-a) of section 423 inserted *vide* Act XLII of 1956.

anything inconsistent therewith contained in clause (b) of sub-section (1) :

Provided that the sentence shall not be so enhanced, unless the accused has had an opportunity of showing cause against such enhancement.]

(2) Omitted.

Judgments of subordinate appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any appellate Court other than a High Court :

Provided that, unless the appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

426. (1) Pending any appeal by a convicted person, the appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

[1][(2-a) When any person other than a person [2][convicted of a non-bailable offence] is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may

1. Sub-section (2-a) of section 426 inserted *vide* Act VIII of 2003.
2. Substituted *vide* Act XLII of 1956 for "accused of a non-bailable offence."

if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.]

(3) When the appellant is ultimately sentenced to imprisonment, or life imprisonment, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence or direct it to be taken.

428. (1) In dealing with any appeal under this Chapter, the appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the appellate Court is the High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of [1][jurors].

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing

1. Substituted *vide* Act XLII of 1956 for "assessors".

(if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Court to which appeal shall lie.

430. (1) In cases in which a second or third class Magistrate passes a sentence of imprisonment for a term extending to six months or of fine extending to Rs. 200, or both, first appeal shall lie to a Magistrate specially empowered in this behalf and second appeal to the Sessions Judge.

(2) In cases in which a Magistrate or an Assistant Session Judge passes a sentence of imprisonment for a term exceeding six months, but not four years or of fine exceeding Rs. 200 but not Rs. 1,000, or both, first appeal shall lie to the Sessions Judge and second appeal to the High Court.

(3) In cases in which a sentence of more than four years has been passed by a competent Court, and appeal shall lie direct to the High Court.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432 to 434. Omitted.

Power to call for records of inferior Courts.

435. (1) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by [1][the Government] in this behalf, may call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended

1. Substituted *vide* Act XV of 2004 for "High Court". [For earlier amendments see Act X of 1996 and VI of 2002.]

and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

EXPLANATION.—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

Power to order inquiry.

436. On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrate, subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged :

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Power to order commitment.

437. When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been in the opinion of the Sessions Judge or District Magistrate improperly discharged :

Provided as follows:—

(*a*) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(*b*) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Report to High Court.

438. (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge

High Court's powers of revision.

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence ; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given

under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.

Optional with Court to hear parties.

440 No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

441. Omitted.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are comformable to the decision so certified ; and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

443 to 463. Omitted.

CHAPTER XXXIV.

LUNATICS.

Procedure in case of accused being lunatic.

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by

the Chief Medical Officer of the Province or such other medical officer as [1][the Government] direct, and thereupon shall examine such Chief Medical Officer or other officer as a witness, and shall reduce the examination to writing.

(1-a) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. (1) If any person committed for trial before a Court of Session or the High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the Court [2][x x x] shall, in the first instance, try the fact of such unsoundness and incapacity; and if the Court is satisfied of the fact, the Judge shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to [1][the Government]:

Provided that no order for the detention of the accused in

1. See footnote under section 4 (1) (a).
2. Words "with the aid of assessors" omitted *vide* Act XLII of 1956.

a lunatic asylum shall be made otherwise than in accordance with such rules as [1][the Government] may have made under the Lunacy Act of 1977.

Resumption of inquiry or trial.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466 and the sureties for his appearance produce him to the officer, whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

1. See footnote under section 4 (1) (a).

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be detained in safe custody.

471. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to [1][the Government] :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as [1][the Government] may have made under the Lunacy Act, 1977.

Power of Government to relieve Inspector General of certain functions.

(2) [1][The Government] may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474.

472. Omitted.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is detained under the provisions of section 466, and in the case of a person detained in a jail, the Minister-in-charge of jail, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468 ; and the certificate of such Minister or visitors as aforesaid shall be receivable as evidence.

1. See footnote under section 4 (1)(a).

Procedure where lunatic detained under section 466 or 471 is declared fit to be released.

474. (1) If such person is detained under the provisions of section 466 or section 471, and such Minister or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, [1][the Government] may thereupon order him to be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to [1][the Government], which may order his release or detention as it thinks fit.

Delivery of lunatic to care of relative or friend.

475 (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, Minister-in-charge may, upon the application of such relative or friend and on his giving security to the satisfaction of Minister-in-charge that the person delivered shall –

(*a*) be properly taken care of and prevented from doing injury to himself or to any other person, and

(*b*) be produced for the inspection of such officer, and at such times and places, as the Minister-in-charge may direct, and

(*c*) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (*b*), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the

1. See footnote under section 4 (1) (a).

inspecting officer shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

476. (1) When any civil, revenue or criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (*b*) or clause (*c*), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided,

Superior Court may complain where subordinate Court has omitted to do so.

476-A. The power conferred on civil, revenue and criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the

Court to which such former Court is subordinate within the meaning of section 195, sub-seetion (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint; and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

Appeals.

476-B. Any person on whose application any civil, revenue or criminal Court has refused to make a complaint under section 476 or section 476-A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly.

477. Omitted.

Power of civil and revenue Courts to complete inquiry and commit to High Court or Court of Session.

478. (1) When any such offence is committed before any civil or revenue Court, or brought under the notice of any civil or revenue Court in the course of a judicial proceeding, and th case is triable exclusively by the High Court or Couert of Session, or such civil or revenue Court thinks that it ought to be tried by the High Court or Court of Session, such civil or revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and com mit or hold to bail the accused person to take his trial before the High Court or Court of Session as the case may be.

(2) For the purposes of an inquiry under this section the civil or revenue Court may, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII and shall be deemed to have been held by a Magistrate.

Procedure of civil or revenue Court in such cases.

479. When any such commitment is made by a civil or revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the District Magistrate or other Magistrate authorised to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of false evidence.

[1][**479-A**. (1) Notwithstanding anything contained in sections 476 to 479 inclusive, when any civil, revenue or criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which, appears to have been committed by him, the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect, stating its reasons therefor and may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof in writing signed by the presiding officer of the Court setting forth the evidence which, in the opinion of the Court, is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction, and may, if the accused is present before the Court, take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate:

Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

EXPLANATION.—For the purposes of this sub-section, a Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

1. Section 479-A inserted *vide* Act XLII of 1956.

(3) No appeal shall lie from any finding recorded and complaint made under sub-section (1)

(4) Where, in any case, a complaint has been made under sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen. the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case mam have been transferred shall be adjourned until such appeal is decided•; and the appellate Court. after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistraet before whom the hearing of the case is pending.

(5) In any case, where an appeal has been preferred from any decision of a civil, revenue or criminal Court but no complaint has been made under sub-section (1), the power conferred on such civil, revenue or criminal Court under the said sub-section may be exercised by the appellate Court; and where the appellate Court makes such complaint, the provisions of sub-section (1) shall apply accordingly, but no such order shall be made, without giving the person affected thereby an opportunity of being heard.

(6) No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section.]

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 188 or section 228 of the Ranbir Penal Code is committed in the view or presence of any civil, criminal or revenue Court, the Court may cause the offender, to be detained in custody and at any time before the rising of the Court on the same day, may if it thanks fit, take cognizance of offence and sentence the offender lo fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) Omitted.

Record in such cases.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the

offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Ranbir Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 480.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court, is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a civil Court within sections 480 and 482.

483. When [1][the Government] so direct, any Registrar or any Sub-Registrar appointed under the Registration Act, 1977 shall be deemed to be a civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has under section 480 or section 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial or refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

1. See footnote under section 4 (1) (a).

485. If any witness or person called to produce a document or thing before a criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482.

Imprisonment or committal of person refusing to answer or produce document.

[1][**485-A.** (1) If any witness being summoned to appear before a criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials in which an appeal lies.]

Summary procedure for punishment for non-attendance by a witness in obedience to summons.

486. (1) Any person sentenced by any Court under section 480 or section 485 [2][or section 485 A] may, notwithstanding anyt hing hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Appeals for convictions in contempt cases.

(2) The provisions of Chapter XXXI shall, so far as they are applicable. apply to appeals under this section,

1. Section 485-A inserted *vide* Act XLII of 1956.
2. Inserted *vide ibid*.

and the appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may when such officer is also Judge of a civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. (1) Except as provided in sections 480 and 485., no Judge of a criminal Court or Magistrate, other than a Judge of the High Court, shall try any person or any offence referred to n section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Sub divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such rate, not exceeding [1][five hundred rupees] in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

1. Substituted *vide* Act XLII of 1956 for "one hundred rupees".

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing:

Provided further that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown on an application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs

as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Alteration in allowance.

489. (1) On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit; provided that, if he increases the allowance, the monthly rate of [1][five hundred rupees] in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

491. (1) The High Court may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

1. Substituted *vide* Act XLI! of 1956 for "one hundred rupees".

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners [1][x x x] for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(*f*) that the body of a defendent within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. (1) [2][The Government] may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent to be Public Prosecutor for the purpose of any case.

Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall

1. Words " acting under the authority of any Commission from His Highness" deleted *vide* Act X of 2010.
2. See footnote under section 4 (1) (a).

conduct the prosecution, and the pleader so instructed shall act therein, under his directions.

Effect of withdrawal from prosecution.

494. Any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted, in respect of such offence or offences.

Permission to conduct prosecution.

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by [1][the Government] in this behalf, but no person, other than the Public Prosecutor or other officer generally or specially empowered by [1][the Government] in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX.

OF BAIL.

In what cases bail to be taken.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the

1. See footnote under section 4 (1) (a).

custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided :

Provided further that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

When bail may be taken in case of non-bailable offence.

[1]**497.** (1) When any person accused of [2][or suspected of the commission of] any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court. he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life :

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

[3][(3-a) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.]

1. This section was adopted *vide* Law Department Notification No. 14-L/84 dated. 3rd Phagan, 1984, published in the Government Gazette dated 12th Phagan, 1984
2. Inserted *vide* Act XLII of 1956.
3. Sub-section (3-a) of section 497 inserted *vide* Act XLII of 1956.

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) The High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

Power to direct admission to bail or reduction of bail.

498. [1][(1)] The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive ; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.[2]

[1][(2) A High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him in custody.]

Bond of accused and sureties.

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and, place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

[3][(3) For the purpose of determining whether the sureties are sufficient, the Court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further inquiry as it deems necessary]

1. Section 498 renumbered as sub-section (1) of that section and sub-section (2) inserted *vide* Act XLII of 1956.

2. It is directed by notification No. 95 dated 5th Katik, 1974 that while the High Court is sitting at Jammu or Srinagar, the Sessions Judge of the other province may entertain and pass orders on application for bail to High Court in appeal. Notification was published in the Government Gazette dated 27th Katik, 1974.

3. Sub-section (3) of section 499 inserted *vide* Act XLII of 1956.

500.(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released ; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

Discharge of sureties.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to [1][any Magistrate], a Court of Session or the High Court that the examination of a witness is necessary for

When attendance of witness may be dispensed with.

1. Substituted *vide* Act XLII of 1956 for "a District Magistrate".

the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness:

Issue of commission and procedure thereunder.

[1][Provided that where the examination of the President or the Vice-President or the Governor, or the Sadar-i-Riyasat of the State, as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.]

[2](2) Omitted.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in [3][a Part A State or States of Ajmer, Coorg or Delhi].

504. Omitted.

505. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed, or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

Parties may examine witnesses.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

1. Proviso to sub-section (1) of section 503 added *vide* Act XLII of 1956.
2. Sub-section (2) of section 503 omitted *vide* Act XLII of 1956.
3. Substituted *vide* A.L.O. 2008 for "British India".

Power of Subordinate Magistrate to apply for issue of commission

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

507. (1) After any commission issued under section 503 or 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Evidence Act, 1977, may also be received in evidence at any subsequent stage of the case before another Court.

Adjournment of inquiry or trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. (1) The deposition of a Chief Medical Officer or other medical witness taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

510. [1][(1)] Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [2][or the Chief Inspector of Explosives or the Director of Finger Print Bureau or an officer of the Mint], upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

[1][(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject-matter of his report.]

[3][**510-A.** (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

Evidence on affidavits.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.]

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

Previous conviction or acquittal how proved.

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was

1. Section 510 numbered as sub-section (1) of that section and sub-section (2) inserted *vide* Act XLII of 1956.
2. Inserted *vide* Act XLII of 1956.
3. Section 510-A inserted *vide* Act XLII of 1956.

suffered ;
together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for the trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence when offender unknown.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of Jammu and Kashmir State.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government-promissory-notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Procedure on forfeiture of bond.

514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the attachment and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514-B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

Procedure in case of insolveney or death of surety or when a bond is forfeited.

514-A. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court by whose order such bond was taken, or a Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if

there had been a default in complying with such original order.

514-B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

Bond required from a minor.

515. All orders passed under section 514 by any Magistrate other than a District Magistrate, shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeal from, and revision of, orders under section 514.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

516-A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, [1][or if it is otherwise expedient so to do, the Court] may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Order for custody and disposal of property pending trial in certain cases.

517. (1) When an inquiry or a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have

Order for disposal of property regarding which offence committed.

1. Inserted *vide* Act XLII of 1956.

been commited, or which has been used for the commission of any offence.

(2) When the High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is live-stock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

EXPLANATION. - In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser

and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

Destruction of libellous and other matter.

521. (1) On a conviction under the Ranbir Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Ranbir Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immovable property.

522. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence

shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

524. Procedure where no claimant appears within six months.

(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by [1][the Government] in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which the appeals against sentences of the Court passing such order would lie.

525. Power to sell perishable property.

If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold ; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

---

1. Substituted *vide* Act XV of 2004 for "High Court". [For earlier amendment see Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.]

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. (1) Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice, or is required by any provision of this Code, it may order—

(i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(ii) that any particular case or appeal, or class of cases or appeals be transferred from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself ; or

(iv) that an accused person be committed for trial to itself or to a Court of Session.

[1][(1-a) Notwithstanding anything contained in sub-section (1), no application shall lie to the High Court for the exercise of its powers under the said sub-section for transferring any case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.]

(2) When the High Court withdraws for trial before itself any case from any Court, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or

1. Sub-section (1-a) of section 526 inserted *vide* Act XLII of 1956.

on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Government Advocate, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court may under this section award by way of compensation to the person opposing the application.

Notice to Public Prosecutor of application under this section.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6a) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case

(7) Nothing in this section shall be deemed to affect any order made under section 197.

Adjournment on application under this section or under section 528.

(8) If, in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section [1][or under section 528], the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party [1][if the application is intended to be made to the same Court to which the party has been

1. Inserted *vide* Act XLII of 1956.

given an opportunity of making such an appplication,] or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.

EXPLANATION.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344.

(10) If, before the argument (if any) for admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.

526-A. Omitted.

[1]**527.** Omitted.

Sessions Judge may withdraw cases from Assistant Sessions Judge.

528 (1) Any Sessions Judge may withdraw [2][any case or appeal] from, or recall [2][any case or appeal] which he has made over to, any Assistant Sessions Judge subordinate to him.

[3][(1-a) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(1-b) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (1-a), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this

1. Section 527 omitted *vide* Act X of 2011.
2. Substituted *vide* Act XLII of 1956 for "any case".
3. Sub-sections (1-a), (1-b) and (1-c) of section 528 inserted *vide* Act XLII of 1956.

Code to another Court for trial or hearing, as the case may be ;

(1-c) Any Sessions Judge, on an application made to him in this behalf, may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from one criminal Court to another criminal Court in the same sessions division.]

District or Sub-divisional Magistrate may withdraw or refer cases.

(2) Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorise District Magistrate to withdraw classes of cases.

(3) [1][The Government] may authorise the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

CHAPTER XLIV-A.

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN BRITISH SUBJECTS AND OTHERS.

528-A to 528-D. Omitted.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search-warrant under section 98 ;

1. See footnote under section 4 (1) (a).

(*b*) to order, under section 155, the police to investigate an offence ;

(*c*) to hold an inquest under section 176 ;

(*d*) to issue process, under section 186; for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;

(*e*) to take cognizance of an offence under section 190, sub-section (1), clause (*a*) or clause (*b*) ;

(*f*) to transfer a case under section 192 ;

(*g*) to tender a pardon under section 337 or section 338 ;

(*h*) to sell property under section 524 or section 525 ; or

(*i*) to withdraw a case and try it himself under section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely :—

(*a*) attaches and sells property under section 88 ;

(*b*) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;

(*c*) demands security to keep the peace ;

(*d*) demands security for good behaviour ;

(*e*) discharges a person lawfully bound to be of good behaviour ;

(*f*) cancels a bond to keep the peace ;

(*g*) makes an order under section 133 as to a local nuisance ;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance ;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII ;

(*k*) takes cognizance, under section 190, sub-section (1), clause (c), of an offence ;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;

(*m*) calls, under section 435, for proceedings ;

(*n*) makes an order for maintenance ;

(*o*) revises, under section 515, an order passed under section 514 ;

(*p*) tries an offender ;

(*q*) tries an offender summarily ; or

(*y*) decides an appeal ;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

When irregular commitments may be validated.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

Non-compliance with provisions of section 164 or 364.

533. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded ; and, notwithstanding anything contained in the Evidence Act, 1977, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits,

(2) The provisions of this section apply to Courts of appeal, reference and revision.

534. Omitted.

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

Effect of omission to prepare charge.

(2) If the Court of appeal or revision thinks that a failure of justice have been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

[1][**536.** If an offence triable by a jury is tried without a jury, the trial shall not on that ground only be invalid, unless the objection is taken before the Court proceeds to record evidenee in the case.]

Trial without jury of offences triable by jury.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, [2][x] proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

[3][(*b*) of any error, omission or irregularity in the charge, including any misjoinder of charges, or],

(*c*) of the omission to revise any list of [4][jurors] in accordance with section 324, or

(*d*) Omitted.

[5][unless such error, omission or irregularity has in fact occasioned a failure of justice.]

EXPLANATION.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

1. Section 536 inserted *vide* Act XLII of 1956.
2. Word "charge" omitted *vide ibid.*
3. Clause (b) of section 537 inserted *vide ibid.*
4. Substituted *vide ibid* for "assessors".
5. Added *vide* Corrigenda published in Government Gazette dated 5th Har, 1993.

538. No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

Attachment not illegal, person making same not trespasser for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any Court in the State may be sworn and affirmed before such Court or any Magistrate or other Court in the State, but if the affidavit or affirmation is made outside the limits of the State, it may be sworn or affirmed before any tribunal competent in that behalf according to the law of locality where the affidavit or affirmation is made.

Court and persons before whom affidavit may be sworn.

[1][**539-A.** (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

Affidavit in proof of conduct of public servant.

(2) Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

539-AA. (1) An affidavit to be used before any Court other than a High Court under section 510-A or section 539-A may be sworn or affirmed in the manner prescribed in section 539 or before any Magistrate.

Authorities before whom affidavits may be sworn.

(2) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.]

1. Sections 539-A and 539-AA substituted for original section 539-A *vide* Act XLII of 1956.

539-B. (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

Local inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

Provided that, in the case of a trial [1][by jury], the Judge shall not act under this section unless such [2][jury] are also allowed a view under section 293.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

540-A. [3][(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.]

Provisions for inquiries and trial being held in the absence of accused in certian cases.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or

1. Substituted *vide* Act XLII of 1956 for "with the aid of assessors".
2. Substituted *vide ibid* for "assessors."
3. Sub-section (1) of section 540-A substituted *vide ibid*.

tried separately.

Power to appoint place of imprisonment.

541. (1) Unless when otherwise provided by any law for the time being in force, [1][the Government] may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(2) If any person liable to be imprisoned or committed to custody under this Court, is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under [2]section 342 of the Code of Civil Procedure; or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under [2]section 341 of the Code of Civil Procedure.

Power of 1st class Magistrate to order prisoner in jail to be brought up for examination.

542. (1) Any Magistrate of the 1st class desirous of examining as a witness in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

1. See footnote under section 4 (1) (a).
2. Section 58, Civil Procedure Code, 1977.

544. Subject to any rule made by the High Court with the previous sanction of [1][the Government], any criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses.

545. (1) Whenever under any law in force for the time being a criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or [2][a sentence (including a sentence of death) of which fine forms a part], the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

Power of Court to pay expenses or compensation out of fine.

(*a*) in defraying expenses properly incurred in the prosecution ;

(*b*) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a civil Court ;

[3][(*bb*) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1977, entitled to recover damages from the person sentenced for the loss resulting to them from such death ;]

(*c*) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

1. See footnote under section 4 (1) (a).
2. Substituted *vide* Act XLII of 1956 for "a sentence of which fine forms a part".
3. Clause (bb) of section 545 (1) inserted *vide* Act XLII of 1956.

Payments to be taken into account in subsequent suits.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Order of payments of certain fees paid by complainant in non-cognizable cases.

546-A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may in addition to the penalty imposed upon him, order him to pay to the complainant—

(*a*) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(*b*) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an appellate Court, or by the High Court, when exercising its powers of revision.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a criminal Court desires to have a copy of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith :

Provided that he pays for the same, unless the Court, for some special reason thinks fit to furnish it free of cost.

Delivery to military authorities of persons liable to be tried by Court-martial.

549. (1) [1][The Government] may make rules, consistent with this Code and the Army Act in force in the State or any similar law for the time being in force as to the cases in which persons subject to military law, shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the

1. Substituted *vide* Act X of 2010 for "His Highness."

Army Act in force in the State, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment, to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Apprehension of such persons.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Powers to police to seize property suspected to be stolen.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Powers of superior officers of police.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Power to compel restoration of abducted female.

552. Upon complaint made to a District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of [1][sixteen] years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. Omitted.

Power of High Court to make rules.

554. (1) The High Court may, from time to time, and with the previous sanction of [2][the Government],—

1. Substituted for "fourteen" *vide* Notification 14-L/83 published in Government Gazette dated 29th Bhadon, 1983.
2. See footnote under section 4 (1) (*a*).

(*a*) make rules for keeping all books, entries and accounts to be kept in all criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all criminal Courts subordinate to it ; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(2) All rules made under this section shall be published in the Government Gazette.

Forms.

555. Subject to the power conferred by section 554, the forms set forth in the Fifth Schedule, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned, and if used shall be sufficient.

Power of High Court to make rules in respect of petition writers.

[1][**555-A.** (1) The High Court may, from time to time, and with the previous approval of the Government, make rules—

(*a*) as to the persons who may be permitted to act as petition writers in the criminal Courts subordinate to it ;

(*b*) regulating the issue of licence to such persons, the conduct of business by them, and the scale of fees to be charged by them ; and

(*c*) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed :

Provided that the rules made under this section shall not be inconsistent with this Code or any other law in force for the time being.

(2) All rules made under this section shall be published in the Government Gazette.]

Case in which Judge or Magistrate is personally interested.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or

1. Section 555-A inserted *vide* Act XLII of 1956.

Magistrate shall hear an appeal from any judgment or order passed or made by himself.

EXPLANATION.— A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Practising pleader not to sit as Magistrate in certain Courts.

557. No pleader who practises in the Court of any Magistrate, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Power to decide language of Courts.

558. The Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories of Jammu and Kashmir State.

Delegation of powers.

[1][**558-A.** The Government may by order direct that all or any of the powers and duties conferred or imposed on the Government by the Code be exercised or performed by the Minister-in-charge, Law Department.]

Provision for powers of Judges and Magistrates being exercised by their successors in office.

559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Magistrate, the District Magistrate shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

1. Section 558-A inserted *vide* Act XV of 2004.

(3) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

Officers concerned in sales not to purchase or bid for property.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a District Magistrate shall—

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence.

(2) And, notwithstanding anything in this Code, if District Magistrate deems it necessary to direct an investigation by a police officer, with respect to such an offence as is referred to in sub-section (1), no police officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

Saving of inherent power of High Court.

561-A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

First Offenders.

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good

conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureti s, to appear and receive sentence when called upon during such period (not exceeding three years as the Court may direct, and in the meai time to keep the peace and be of good behaviour :

Provided that where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by [1][the Government] in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Conviction and release with admonition.

(1-a) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Ranbir Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(2) An order under this section may be made by any appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126-A and 406-A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

1. See footnote under section 10(2)

Provision in case of offender failing to observe conditions of his recognizances.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

Conditions as to abode of offender.

564. The Court, before directing the release of an offender under section 562, sub-section (1), shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

Previously convicted offenders.

Order for notifying address of previously convicted offender.

565. (1) When any person having been convicted—

(*a*) by a Court in the Jammu and Kashmir State of an offence punishable under section 215, section 489-A, section 489-B, section 489-C or section 489-D, of the Ranbir Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or

(*b*) by a Court or Tribunal in [1][a Part A State or States of Ajmer, Coorg or Delhi] of any offence which would, if committed in the State, have been punishable under any of the aforesaid sections or Chapters of the Ranbir Penal Code with like imprisonment for a like term,

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by the High Court, Court of Session, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of imprisonment on such person, also order that his residence and any change of or absence from such

1. Substituted *vide* A. L. O. 2008 for "British India".

residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) [1][The Government] may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an appellate Court or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed within the meaning of section 176 of the Ranbir Penal Code to have omitted to give a notice required for the purpose of preventing the commission of an offence.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the District in which the place last notified by him as his place of residence is situated.

---

1. See footnote under section 10 (2).

SCHEDULE I—Omitted.

SCHEDULE II

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this Schedule, headed respectively "Offence" and "Punishment under the Ranbir Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Ranbir Penal Code, or even as abstracts of those sections, but merely as reference to the subject of the section, the number of which is given in the first column.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable, or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	,,	,,	,,	,,	,,	,,
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	,,	,,	,,	,,	The same punishment as for the offence intended to be abetted.	,,
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	,,	,,	,,	,,	The same punishment as for the offence committed.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
114	Abetment of any offence, if abettor is present when offence is committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence committed.	The Court by which the offence abetted is triable.
115	Abetment of an offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment.	,,	,,	Not bailable	,,	Imprisonment of either description for 7 years and fine.	,,
	If an act which causes harm be done in consequence of the abetment.	,,	,,	,,	,,	Imprisonment of either description for 14 years and fine.	,,
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	,,	,,	According as the offence abetted is bailable or not.	,,	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	,,
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	,,	,,	,,	,,	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	,,
117	Abetting the commission of an offence by the public, or by more than ten persons.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
118	Concealing a design to commit an offence punishable with death or imprisonment for life if the offence be committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable.	According as the offence abetted is compoundable or not.	Imprisonment of either description for 7 years and fine.	The Court by which the offence abetted is triable.
118	If the offence be not committed.	,,	,,	Bailable.	,,	Imprisonment of either description for 3 years and fine.	,,
119	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed.	,,	,,	According as the offence abetted is bailable or not.	,,	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	,,
	If the offence be punishable with death or imprisonment for life.	,,	,,	Not bailable.	,,	Imprisonment of either description for 10 years.	,,
	If the offence be not committed.	,,	,,	Bailable.	,,	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	,,
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	,,	,,	According as the offence concealed is bailable or not.	,,	,,	,,

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
	If the offence be not committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Bailable	According as the offence abetted is compoundable or not.	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
120-B	Criminal conspiracy to commit an offence punishable with death, imprisonment for life, or rigorous imprisonment for a term of two years or upwards.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence which is the object of the conspiracy.	According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court in the case of all other offences Court of Session, Magistrate of the first class.
	Any other criminal conspiracy.	Shall not arrest without warrant.	Summons.	Bailable.	,,	Imprisonment of either description for six months and fine or both.	Magistrate of the first class.
	CHAPTER VI.—OFFENCES AGAINST THE STATE.						
121	Waging or attempting to wage war, or abetting the waging of war, against the Sadar-i-Riyasat, the Government or Government of India.	Shall not arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Death, or imprisonment for life and forfeiture of property.	Court of Session.
121-A	Conspiring to commit certain offences against the State.	,,	,,	,,	,,	Imprisonment for life or any shorter term, or imprisonment of either description for 10 years, and forfeiture of property.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
122	Collecting arms, etc., with the intention of waging war against the Sadar-i-Riyasat, the Government and Government of India.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life or imprisonment of either description for 10 years, and fine.	Court of Session.
123	Concealing, with intent to facilitate a design to wage war.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
124	Assaulting Ministers of the Government with intent to compel or restrain the exercise of any lawful power.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
124-A	Sedition.	,,	,,	,,	,,	Imprisonment for life or for any term and fine, or imprisonment of either description for 3 years, and fine, or fine.	Court of Session or District Magistrate or Magistrate of the first class specially empowered by 1[High Court] in that behalf.
125	Waging war against any Asiatic Power in alliance or at peace with the Government of India, or abetting the waging of such war.	,,	,,	,,	,,	Imprisonment for life and fine or imprisonment of either description for 7 years and fine, or fine.	Court of Session.
126	Committing depredation on the territories of any Power in alliance or at peace with the Government of India.	,,	,,	,,	,,	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	,,

1. Substituted for "His Highness" *vide* Notification 3-L/85 published in the Government Gazette dated 8th Bhadon, 1985.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
127	Receiving property taken by war or depredation, mentioned in sections 125 and 126.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine and forfeiture of certain property.	Court of Session.
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	,,	,,	,,	,,	Imprisonment for life or imprisonment of either description for 10 years, and fine.	,,
129	Public servant negligently suffering prisoner of State or war in his custody to escape.	,,	,,	Bailable	,,	Simple imprisonment for 3 years, and fine.	Court of Session, or Magistrate first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	,,	,,	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
	CHAPTER VII. OFFENCES RELATING TO THE ARMY.						
131	Abetting mutiny, or attempting to seduce an officer, soldier from his allegiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	,,	,,	,,	,,	Death or imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
133	Abetment of an assault by an officer, soldier on his superior officer, when in the execution of his office.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarly issue in the first instance.	Whether bailable or not.	Whether compound-able or not.	Punishment under the Ranbir Penal code.	By what Court triable.
135	Abetment of the desertion of an officer, soldier.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine or both.	Magistrate of the first or second class.
136	Harbouring such an officer, soldier, who has deserted.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	,,
137	Omitted.						
138	Abetment of act of insubordination by an officer, soldier, if the offence be committed in consequence.	,,	,,	,,	,,	Imprisonment of either description for 6 months or fine, or both.	,,
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	,,	Summons.	,,	,,	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate,
	CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY,						
143	Being member of an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate,
144	Joining an unlawful assembly armed with any deadly weapon.	,,	Warrant.	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate,
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	,,	,,	,,	,,	,,	,,
147	Rioting.	,,	,,	,,	,,	,,	,,
148	Rioting, armed with a deadly weapon.	,,	,,	,,	,,	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Not compoundable.	The same as for the offence.	The Court by which the offence is triable
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed bythe person hired, engaged or employed.	,,	,,	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	,,
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	,,	Summons.	Bailable.	,,	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, etc.	May arrest without warrant.	Warrant.	Bailable.	,,	Imprisonment of either description for 4 years, or fine, or both.	Court of Seesion or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	May arrest without warrant.	Warrant.	Bailable.	,,	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed.	,,	Summons.	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	,,
153-A	Promoting enmity between classes.	Shall not arrest without warrant.	Warrant.	Not bailable.	,,	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
154	Owner or occupier of land not giving information of riot, etc.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Fine of 1,000 rupees.	Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	,,	,,	,,	,,	Fine	,,
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	,,	,,	,,	,,	,,	,,
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	,,	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	,,
158	Being hired to take part in an unlawful assembly or riot.	,,	,,	,,	,,	,,	,,
159	Or to go armed.	,,	Warrant	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	,,
160	Committing affray.	Shall not arrest without warrant.	Summons.	,,	,,	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.
CHAPTER IX.—OFFENCES BY, OR RELATING TO PUBLIC SERVANTS.							
161	Being or expecting to be a public servant and taking a gratification other than legal remuneration in respect of an official act.	[1][May arrest without warrant.]	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.

1. Substituted *vide* Act XLII of 1956 for "Shall not arrest without warrant".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code	By what Court triable.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	[1][May arrest without warrant.]	Summons.	Bailable.	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	,,	,,	,,	,,	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	,,	,,	,,	,,	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	,,	,,	,,	Simple imprisonment for 1 year, or fine, or both.	,,
167	Public servant framing an incorrect document with intent to cause injury.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	,,	,,	,,	,,	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	,,	,,	,,	,,	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	,,

1. Substituted *vide* Act XLII of 1956 for "Shall not arrest without warrant."

1 Section of Ranbir Penal Code	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
170	Personating a public servant.	May arrest without warrant.	Warrant	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	"	Summons.	"	"	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	"
	CHAPTER IX-A.—OFFENCES RELATING TO ELECTIONS.						
171-E	Bribery	Shall not arrest without warrant	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year or fine or both or if treating only, fine only.	Magistrate of the first class.
171-F	Undue influence [1][x x x] at an election.	"	"	"	"	Imprisonment of either description for 1 year, or fine, or both.	"
	[2][Personation at an election.]	May arrest without warrant.	"	"	"	"	"
171-G	False statement in connection with an election.	[3][Shall not arrest without warrant]	"	"	"	Fine	"
171-H	Illegal payments in connection with elections.	"	"	"	"	Fine of 500 Rs.	"
171-I	Failure to keep election accounts.	"	"	"	"	"	"
	CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.						
172	Absconding to avoid service of summons or other proceedings from a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, etc., in a Court of Justice.	"	"	"	"	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	

1. Words "and personation" omitted *vide* Act, IV of 1957.
2. Inserted *vide ibid.*
3. Substituted *vide ibid for* "Ditto"

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shall not arrest without warrant.	summons."	Bailable.	Not compoundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Magistrate of the first or second class.
	If summons, etc., require attendance in person, etc., in a Court of Justice.	"	"	"	"	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	"
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	"	"	"	"	Simple imprisonment for 1 month, or fine 500 rupees, or ofboth.	Any Magistrate.
	If the order require personal attendance, etc., in a Court of Justice.	"	"	"	"	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	"
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	"	"	"	"	Simple imprisonment forı month, or fine 500 ofrupees, or both.	The Court in which the offence isc ommitted subject to the provisions of Ch. XXXV, or, if not committed in a Court, Magistrate of the first class or second class.
	If the document is required to be produced in or delivered to a Court of justice.	"	"	"	"	Simple imprisonment for 6 months, or fiue of 1,000 rupees, or both.	"

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, etc.	,,	,,	,,	,,	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	,,
177	Knowingly furnishing false information to a public servant.	,,	,,	,,	,,	,,	,,
	If the information required respects the commission of an offence, etc.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	,,
178	Refusing oath when duly required to take oath by a public servant.	,,	,,	,,	,,	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Ch. XXXV; or, if not committed in a Court, Magistrate of the first or second, class.
179	Being legally bound to state truth, and refusing to answer questions.	,,	,,	,,	,,	,,	,,
180	Refusing to sign a statement made to a public servant when legally required to do so.	,,	,,	,,	,,	,,	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
181	Knowingly stating to a public servant on oath as true that which is false.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	,,	Summons.	,,	,,	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	,,	,,	,,	,,	Imprisonment of either description for 6 months or fine, or both.	,,
184	Obstructing sale of property offered for sale by authority of a public servant.	,,	,,	,,	,,	,,	
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	,,	,,	,,	,,	Imprisonment of either description for 1 month or fine of 200 rupees or both.	,,
186	Obstructing public servant in discharge of his public functions.	,,	,,	,,	,,	Imprisonment of either description for three months, or fine of 500 rupees, or both.	Magistrate of the first or second class.
187	Omission to assist public servant when bound by law to give such assistance.	,,	,,	,,	,,	Simple imprisonment for 1 month, or fine of 200 rupees or both.	Magistrate of the first or second class.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	,,	,,	,,	,,	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Magistrate of the first or second class.
	If such disobedience causes danger to human life, health or safety, etc.	,,	,,	,,	,,	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	,,
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	1[Shall not arrest without warrant.]	Warrant.	Not bailable.	,,	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first class.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Shall not arrest without warrant.	Summons.	Bailable.	,,	Imprisonment of either description for 1 year, or fine or both.	,,
2[190 A	Dissemination of contents of proscribed documents.	May arrest without warrant.	Warrant.	Bailable.	,,	Imprisonment of either description for six months or fine or both.	,,

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	,,	,,	,,	,,	Imprisonment of either description for 3 years and fine.	,,

1. Substituted *vide* correction slip published in Government Gazette dated 14th Sawan, 2000.
2. Entry relating to section 190-A inserted *vide* Act I of 1993.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	,,	,,	,,	,,	Death or as above.	,,
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for seven years or upwards.	,,	,,	Bailable.	,,	The sameas for the offence.	Court of Session.
196	Using in a judicial proceeding evidence known to be false or fabricated.	,,	,,	According as the offence of giving such evidence is bailable or not.	,,	The same as for giving or fabricating false evidence.	Ccurt of Session or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	,,	,,	Bailable.	,,	The same as for giving false evidence.	,,
198	Using as a true certificate one known to be false in a material point.	,,	,,	,,	,,	,,	,,
199	False statement made in any declaration which is by law receivable as evidence.	,,	,,	,,	,,	,,	,,
200	Using as true any such declaration known to be false.	,,	,,	,,	,,	,,	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If punishable with imprisonment for life or imprisonment for 10 years.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session or Magistrate of the 1st class.
	If punishable with less than 10 years' imprisonment.	,,	,,	,,	,,	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both.	Magistrate of the 1st class or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	,,	Summons.	,,	,,	Imprisonment of either description for 3 months, or fine, or both.	Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	,,	Warrant.	,,	,,	Imprisonment of either description for 1 year, or fine, or both.	,,
204	Secreting or destroying any document to prevent its production as evidence.	,,	,,	,,	,,	,,	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
206	Fraudulent removal or concealment, etc, of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	,,	,,	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year or fine, or both.	Magistrate of the first or second class.
208	Fraudulently suffering a decree to pass for a sum not due or suffering decree to be executed after it has been satisfied.	,,	,,	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first class.
209	False claim in a Court of Justice.	,,	,,	,,	,,	Imprisonment of either description for 2 years, and fine.	,,
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	,,	,,	,,		Imprisonment of either description for 2 years, or fine, or both.	,,
211	False charge of offence made with intent to injure.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine or both.	Magistrate of the first class.
	If offences charged be punishable with imprisonment for 7 years or upwards.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
	If offence charged be capital, or punishable with imprisonment for life.	,,		,,	,,	,,	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	,,	,,	,,	Imprisonment of either description for 5 years, and fine.	Court of Session or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	If punishable with imprisonment for life or with imprisonment for 10 years.	May arrest without warrant.	Warrant.	Bailable.	Not Compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
	If punishable with imprisonment for 1 year and not for 10 years.	"	"	"	"	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, etc., to screen an offender from punishment, if the offence be capital.	"	"	"	"	Imprisonment of either description for 4 years, and fine.	Court of Session.
	If punishable with imprisonment for life, or with imprisonment for 10 years.			"	"	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	"	"	"	"	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Magistrate of the first class or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be captial.	Shall not arrest without warrant.	"	"	"	Imprisonment of either description for 4 years, and fine.	Court of Session.
	If punishable with imprisonment for life, or with imprisonment for 10 years.	Shall not arrest without warrant.	"	"	"	Imprisonment of either description for 3 years, and fine.	Court of Session or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant.	Bailable.	Not Compoundable.	Imprisonment for a quarter of the longest term, & of the description, provided for the offence, or fine, or both.	Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	May arrest without wartant.	,,	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	,,	,,	,,	,,	Imprisonment either description for 7 years & fine.	Court of Session, or Magistrate of the first class.
	If punishable with imprisonment for life or with imprisonment for 10 years.	,,	,,	,,	,,	Imprisonment either description for 3 years, with or without fine.	,,
	If with imprisonment for 1 year, and not for 10 years.	,,	,,	,,	,,	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both.	Magistrate of the first class or Court by which the offence is triable.
216-A	Harbouring robbers or dacoits.	,,	,,	,,	,,	Rigorous imprisonment for 7 years, & fine.	Court of Session, or Magistrate of the first class.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.

1. Offence under section 215 made cognizable by Notification No. 4-L/86 published the Government Gazette dated 7th Bhadon, 1986.

1	2	3	4	5	6	7	
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Warrant.	Bailable.	Not Compoundable.	Imprisonment of either description for 3 years, or fine, or both,	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	,,	,,	,,	,,	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	,,	,,	,,	,,	,,	,,
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital or punishable with imprisonment for life, or imprisonment for 10 years.	,,	,,	,,	,,	Imprisonment of either description for 3 years, with or without fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	,,	,,	,,	,,	Imprisonment of either description for 1 year, with or without fine.	Magistrate of the first class or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death.	,,	,,	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 14 years with or without fine.	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	If under sentence of imprisonment for life or imprisonment for 10 years or upwards.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If under sentence of imprisonment for less than 10 years, or lawfully committed to custody.	,,	,,	Bailable.	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	,,	Summons.	,,	,,	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	Bailable.	,,	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	,,
	If charged with an offence punishable with imprisonment for life, or imprisonment for 10 years.	,,	,,	Not bailable.	,,	Imprisonment of either description for 3 years, and fine.	Court of Sessions, Magistrate of the first class.
	If charged with a capital offence.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the person is sentenced to imprisonment for life, or imprisonment for 10 years or upwards.	,,	,,	,,	,,	,,	,,
	If under sentence of death.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
225-A	Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for—						
	(a) in case of intentional omission or sufference.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
	(b) in case of negligent omission or sufference.	Shall not arrest without warrant.	Summons.	,,	,,	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the first or second class.
225-B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant.	Warrant.	,,	,,	Imprisonment of either description for 6 months, or fine, or both.	,,
226	Omitted ..	..	..	..		..	..
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
28	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	,,	,,	Bailable	,,	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	The Court in which the offence is committed subject to the provisions of Chap. XXXV.
229	Personation of a juror or assessor.	,,	,,	,,	,,	Imprisonment of either description for 2 years or fine, or both.	Magistrate of the first class.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
	CHAPTER XII—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.						
231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Indian coin.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
233	Making, buying or selling, instruments for the purpose of counterfeiting coin.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Indian coin.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
	If Indian coin.	,,	,,	,,	,,	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in the State the counterfeiting out of the State of coin.	,,	,,	,,	,,	The punishment provided for abetting the counterfeiting of such coin within the State.	,,
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magitrate of the first class

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
238	Import or export of counterfeits of the Indian coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering etc., the same to any person.	,,	,,	,,	,,	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the first class.
240	The same with respect to Indian coin.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.
243	Possession of Indian coin by a person who knew it to be counterfeit when he became possessed thereof.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
244	Omitted.						
245	Omitted.						
246	Fraudulently diminishing the weight or altering the composition of any coin.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
247	Fraudulently diminishing the weight or altering the composition of Indian coin.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	,,
249	Altering appearance of the Indian coin with intent that it shall pass as a coin of a different description.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
250	Delivery to another of coin possessed with the knowledge that it is altered.	,,	,,	,,	,,	Imprisonment of either description for 5 years, and fine.	,,
251	Delivery of Indian coin possessed with the knowledge that it is altered.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	,,
253	Possession of Indian coin by a person who knew it to be altered when he became possesed thereof.	,,	,,	,,	,,	Imprisonment of either description for 5 years, and fine.	,,
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	,,	,,	Bailable.	,,	Imprisonment for life or imprisonment of either description for 10 years, and fine.	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not	Punishment under the Ranbir Penal Code.	By what Court triable.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	May arrest without warrant.	Warrant	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
257	Making, buying or selling instrument for the purpose of counerfeiting a Government stamp	,,	,,	,,	,,	,,	,,
258	Sale of counterfeit Government stamp.	,,	,,	Not bailable.	,,	Imprisonment of either description for 7 years and fine	Court of Session.
259	Having possession of a counterfeit Government satmp.	,,	,,	,,	,,	,,	Court of Session, or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	,,	,,	,,	,,	Imprisonment of either description for 7 years, or fine, or both.	,,
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	,,	,,	Bailable.	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
262	Using a Government stamp known to have been before used.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine or both.	Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine or both.	Court of Session, or Magistrate of the first class.
263-A	Fictitious stamps.	,,	,,	,,	,,	Fine of 200 rupees.	Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.							
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	,,	,,	,,	,,	,,	,,
266	Being in possession of false weights or measures for fraudulent use.	,,	,,	,,	,,	,,	,,
267	Making or selling false weights or measures for fraudulent use.	,,	,,	,,	,,	,,	,,
CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.							
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months or fine, or both.	Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	,,	,,	,,	,,	,,	,,
271	Knowingly disobeying any quarantine rules.	Shall not arrest without warrant.	,,	,,	,,	,,	,,
272	Adulterating food or drink intended for sale, as to make the same noxious.	,,	,,	,,	,,	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	
273	Selling any food or drink as food and drink, knowing the same to be noxious.	,,	,,	,,	,,	,,	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Magistrate of the first or second class,
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	,,	,,	,,	,,	,,	,,
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	,,	,,	,,	,,	,,	,,
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	,,	,,	,,	Imprisonment of either description for 2 months or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	,,	,,	,,	Fine of 15 rupees.	Any Magistrate.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	,,	,,	,,	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	,,
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	,,	,,	,,	,,	,,	Magistrate of the first or second class,
281	Omitted.						

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
282	Conveying for hire any person, by water in a vessel in such a state or so loaded, as to endanger his life.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	"	"	"	"	Simple imprisonment for 1 month or fine of 200 rupees, or both	"
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	"	"	"	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	"
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	"	"	"	"	Any Magistrate.
286	So dealing with any explosive substance.	"	"	"	"	"	"
287	So dealing with any machinery.	Shall not arrest without warrant	"	"	"	"	Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to put it down or repair it.	"	"	"	"	"	"

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
289	A person omitting to take order with any animal in his possession so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	"	"	"	Fine of 200 rupees.	"
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	"	"	"	Simple imprisonment for 6 months, or fine, or both.	Magistrate of the first or second class.
[1]291 A	Wrongful obstruction to the use of public tanks, wells, etc.	Shall not arrest without warrant.	"	"	Compoundable.	Simple imprisonment for one month or fine of Rs. 100 or both.	Any Magistrate.
[2]292	Sale, etc., of obscene books, etc.	"	Warrant.	"	"	Imprisonment of either description for 3 months or fine, or both.	"
[2]293	Sale etc. of obscene objects to young persons.	"	"	"	"	Imprisonment of either description for 6 months or fine, or both.	"
294	Obscene songs.	"	"	"	"	Imprisonment of either description for 2 months or fine, or both.	"
294-A	Keeping a lottery office	Shall not arrest without warrant.	Summons.	"	"	Imprisonment of either description for 6 months or fine, or both.	"
	Publishing proposals relating to lotteries.	"	"	"	"	Fine of 1,000 rupees.	"

1. Section 291-A inserted *vide* Act XVIII of 1996.
2. Sections 292 and 293 amended *vide* Notification No. 15-L/83 published in Government Gazette dated 29th Bhadon, 1983.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
	CHAPTER XV.—OFFENCES RELATING TO RELIGION.						
295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine or both.	Magistrate of the first or second class.
[1]295 A	Maliciously insulting the religion or the religious beliefs of any class.	Shall not arrest without warrant.	Warrant.	Not bailable.	,,	,,	Magistrate of the first class.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	,,	,,	,,	,,	,,	,,
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	,,	,,	Compoundable.	,,	,,
298-A	Intentionally killing or slaughtering cow or like animal.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
298-B	Keeping in possession flesh of such animal.	,,	,,	,,	,,	Imprisonment of either description for 1 year, and fine up to Rs. 500.	Magistrate of the first class.

1. Section 295-A added *vide* Notification No. 3.-L/89 published in Government Gazette dated 17th Baisakh, 1989.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall or dinarily issue in the first instance.	Whether bailable or not.	Whether compound-able or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
298-C	Killing or slaughtering he or she buffalo.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Fine upto five times the price of the slaughtered animal.	Magistrate of the first class.
298-D	Bringing or possessing flesh or untanned hide of a Gond in a town.	,,	,,	,,	,,	Imprisonment of either description for 1 month or fine of 200 rupees, or both.	,,

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

302	Murder.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Death or imprisonment for life, and fine.	Court of Session.
303	Murder by a life convict.	,,	,,	,,	,,	Death.	Court of Session.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 12 years, and fine.	,,
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	,,	,,	,,	,,	Imprisonment of either description for 10 years, or fine, or both.	,,
304-A	Causing death by rash or negligent act.	,,	,,	Bailable.	,,	Imprisonment of either description for 2 years, or fine, or both.	Court of Session or Magistrate of the first class.
305	Abetment of suicide committed by a child or insane, or delirious person, or an idiot, or a person intoxicated.	,,	,,	Not bailable.	,,	Death, or imprisonment for life, or imprisonment for 12 years and fine.	Court of Session.

1. Section 298-D added *vide* Notification No. 9-A/L/84 published in Government Gazette dated 6th Assuj, 1984.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court trable.
	If act done without woman's consent.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or as above.	Court of Session.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	,,	,,	,,	,,	Imprisonment of either description for 10 years, or fine, or both.	,,
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	,,	Bailable.	,,	Imprisonment of either description for 7 years, or fine or both.	Court of Session, or Magistrate of the first class.
318	Concealment of birth by secret disposal of dead body.	,,	,,	,,	,,	Imprisonment of either description for 1 year, or fine, or both.	,,
	Of Hurt.						
323	Voluntarily causing hurt.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Mgaistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Summons.	Bailable.	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal code.	By what Court triable.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant.	Summons.	Not bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	,,	Warrant.	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
328	Administering stupefying drug with intent to cause hurt, etc.	,,	,,	,,	,,	,,	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	,,	,,	Bailable.	,,	Imprisonment of either description for 7 years, and fine.	,,
331	Voluntarily causiug grievous hurt to extort confession or information, or to compel restoration of property, etc.	,,	Summons.	Not bailable.	,,	Imprisonment of either description for 10 years, and fine.	Court of Session.
332	Voluntarily causing hurt to deter public servant from his duty.	,,	,,	Bailable.	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shal ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	May arrest without warrant.	Summons.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	,,	Bailable.	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	,,	,,	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	,,	,,	,,	Not compoundable.	Imprisonment of either description for 3 months or fine of 250 rupees or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, etc.	,,	,,	,,	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months or fine of 500 rupees or both.	Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section of Ranbir Pennal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
338	Causing grievous hurt by an act which endangers human life, etc.	May arrest without warrant	Summons.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
	Of Wrongful Restraint and Wrongful Confinement.						
341	Wrongfully restraining any person.	May arrest without warrant.	Summons.	Bailable.	compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate
342	Wrongfully confining any person.	,,	,,	,,	,,	Imprisonment of either description for 1 year, or fine of 1,000 rupees or both.	Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	,,	,,	,,	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 3 years, or fine or both.	Magistrate of the first or second class.
344	Omitted.	..	..	..	..	..	
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Summons.	Bailable.	Not Compoundable.	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Court of Session, or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
346	Wrongful confinement in secret.	May arrest without warrant.	Summons.	Bailable.	Compoundable when permission is given by the Court before which prosecution is pending.	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Court of Session or Magistrate of the first or second class.
347	Wrongful confinement for the purpose of extorting property, or constraining to do an illegal act, etc.	,,	,,	,,	Not compoundable.	Imprisonment of either description for 3 years, and fine.	,,
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	,,	,,	,,	,,	,,	Court of Session, or Magistrate of the first class.
	Of Criminal Force and Assault.						
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant	Warrant.	,,	Not compoundable.	Imprisonment of either description for 2 years, or fine or both.	Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	,,
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	,,	Compoundable.	Imprisonment of either description for 2 years, or fine or both.	,,

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description of 2 years, or fine or both.	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	May arrest without warrant.	Warrant.	Bailable	Compoundable when permission is given by the Court before which the prosecution is pending	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Any Magistrate.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	,,	Compoundable.	Simple imprisonment for 1 month or fine of 200 rupees or both.	
	Of Kidnapping, Abduction, Slavery and Forced Labour.						
363	Kidnapping ..	May arrest without warrant.	Warrant.	Not bailable.	Not Compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	,,	,,	,,	,,	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	Court of Session.

1 In section 363 punishment raised from 3 years to 7 years *vide* Notification No. 14-I. 83 published in Government Gazette dated 29th Bhadon, 1983.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
[1]366-A	Procuration of minor girl.	May arrest without warrant.	Warrant.	Not bailable.	Not Compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
[2]366-B	Importation of girl from outside the State.	,,	,,	,,	,,	,,	,,
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	,,	,,	,,	,,	,,	,,
368	Concealing or keeping in confinement a kidnapped person.	,,	,,	,,	,,	Punishment for kidnapping or abduction.	Court of Session or Magistrate of the first class.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session or Magistrate of the first class.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	,,	Bailable.	,,	Imprisonment of either description for 10 years, and fine.	Court of Session.
371	Habitual dealing in slaves.	May arrest without warrant.	,,	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
[2]372	Selling or letting to hire a minor for purposes of prostitution, etc.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	,,	,,	,,	,,	,,	,,

1. Section 366-A inserted *vide* Notification 14-I./83 published in the Government Gazette dated 29th Bhadon, 1983.
2 Added *vide* Act IX of 1989.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
374	Unlawful compulsory labour.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
	Of Rape.						
[1]376	Rape— If the woman raped is his own wife and is not under twelve years of age.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
	In any other case.	May arrest without warrant.	Warrant.	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
	Of Unnatural Offences.						
377	Unnatural offences.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session, or Magistrate of the first class.
	CHAPTER XVII.—OFFENCES AGAINST PROPERTY.						
379	Theft.	May arrest without warrant.	Warrant.	Not bailable.	[2][Compoundable when the value of the property does not exceed two hundred and fifty Rs, and permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.

1. Section 376 (282 Ranbir Dand Bidhi) substituted *vide* Notification 14-L/83 published in the Government Gazette dated 29th Bhadon 1983, and further amended by present Code. For correction slip *see* Government Gazette dated 21 st Baisakh, 1997.
2. Substituted *vide* Act XLII of 1956 for "Not compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
380	Theft in a building, tent or vessel.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Any Magistrate.
381	Theft by clerk or servant of property in possession of master or employer.	"	,	,,	[1][Compoundable when the value of the property does not exceed two hundred and fifty rupees and permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 6 years, and fine.	Court of Session or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	,,	,,	,,	Not compoundable.	Rigorous imprisonment for 10 years, and fine.	Court of Session, or Magistrate of the first class.
384	Extortion.	Shall not arrest without warrant.	,,	Bailable.	,,	Imprisonment of either description for 3 years, or fine or both.	Court of Session, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine or both.	,,

1. Substituted *vide* Act XLII of 1956 for "Not compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
386	Extortion by putting a person in fear of death or grievous hurt.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
388	Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years.	,,	,,	Bailable.	,,	Imprisonment of either description for 10 years, and fine.	,,
	If the offence threatened be an unnatural offence.	,,	,,	,,	,,	Imprisonment for life.	,,
389	Putting a person in fear of accusation of offence punishable with death, imprisonment for life, or with imprisonment for 10 years, in order to commit extortion.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
	If the offence be an unnatural offence.	,,	,,	,,	,,	Imprisonment for life.	,,
	Of Robbery and Dacoity.						
392	Robbery ..	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years, and fine.	Court of Session, or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	,,	,,	,,	,,	Rigorous imprisonment for 14 years, and fine.	,,
393	Attempt to commit robbery.	,,	,,	,,	,,	Rigorous imprisonment for 7 years, and fine.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Court of Session or Magistrate of the first class.
395	Dacoity ..	,,	,,	,,	,,	,,	Court of Session.
396	Murder in dacoity.	,,	,,	,,	,,	Death, imprisonment for life, or rigorous imprisonment for 10 years, and fine.	,,
397	Robbery or dacoity with attempt to cause death or grievous hurt.	,,	,,	,,	,,	Rigorous imprisonment for not less than 7 years.	,,
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	,,	,,	,,	,,	,,	,,
399	Making preparation to commit dacoity.	,,	,,	,,	,,	Rigorous imprisonment for 10 years, and fine.	,,
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	,,	,,	,,	,,	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	,,
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	,,	,,	,,	,,	Rigorous imprisonment for 7 years, and fine.	Court of Session, or Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	,,	,,	,,	,,	,,	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
403	Dishonest misappropriation of movable property or converting it to one's own use.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	,,	,,	,,	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first or second class.
	if by clerk or person employed by deceased.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
	Of Criminal Breach of Trust.						
406	Criminal breach of trust.	May arrest without warrant.	Warrant.	Not bailable.	[1] [Compoundable when the value of the property does not exceed two hundred and fifty rupees and permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 3 years, or fine, or both.	Court of, Session or Magistrate of the first or second class.

1. Substitnted *vide* Act XLII of 1956 for "Not Compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
407	Criminal breach of trust by a carrier, wharfinger, etc.	May arrest without warrant.	Warrant.	Not bailable.	[1][Compoundable when the value of the property does not exceed two hundred and fifty rupees and permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	,,	,,	,,	,,	,,	Court of Session or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	,,	,,	,,	Not compoundable.	Imprisonment for life, or imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
411	Dishonestly receiving stolen property, knowing it to be stolen.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	,,	,,	,,	,,	Imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
413	Habitually dealing in stolen property.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,

1. Substituted *vide* Act XLII of 1956 for "Not Compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
	Of Cheating.						
417	Cheating ..	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable when permission is given.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
419	Cheating by personation.	May arrest without warrant	,,	,,	,,	,,	,,
420	Cheating and thereby dishonestly inducing delivery of property, or the making alteration or destruction of a valuable security.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.

1	2	3	4	5	5	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	[1][Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	"	"	"	"	"	"
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	"	"	"	"	"	"
424	Fraudulent removal or concealment of property, of himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	"	"	"	"	Imprisonment of either description for 1 year, or fine, or both.	"
	Of Mischief.						
426	Mischief ..	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months or fine, or both.	Any Magistrate.

1. Snbstituted *vide* Act XLII of 1956 for "Not compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 1 year or fine, or both.	Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	,,	,,	1[Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	,,	Warrant.	,,	,,	Imprisonment of either description for 5 years or fine, or both.	Court of Session, or Magistrate of the first or second class.

1. Substituted *vide* Act XLII of 1956 for "Not compoundable".

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	May arrest without warrant.	Warrant.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 5 years or fine, or both.	Court of Session, or Magistrate of the first or second class.
431	Mischief by injury to public road, bridge, navigable river or navigable channel and rendering it impossable or less safe for travelling or conveying property.	,,	,,	,,	Not compoundable.	,,	,,
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	,,	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
433	Omitted.	....	....	....	....	....	....
434	Mischief by destroying or moving, etc., a land-mark fixed by public authority.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
436	Mischief by fire or explosive substance with intent to destory, a house, etc.	,,	,	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
437	Omitted. ..	....	....	....	....	....	.....
438	Omitted. ..	....	....	....	....	....	.....
439	Omitted. ..	....	....	....	....	....	.....
440	Mischief committed after preparation made for causing death or hurt, etc.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 5 years, and fine.	Court of Session, or Magistrate of the first class.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate
448	House-trespass.	,,	Warrant	,,	,,	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	,,
449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
450	House-trespass in order to the commission of an offence punishable with imprisonment for life.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	,,	,,	Bailable.	Compoundable when permission is given by Court before which prosecution is pending.	Imprisonment of either description for 2 years, and fine	Any Magistrate.
	If the offence is theft.	,,	,,	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, etc.	,,	,,	,,	,,	,,	,,
453	Lurking house-trespass or house-breaking.	,,	,,	,,	,,	Imprisonment of either description for 2 years, and fine.	Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	,,	,,	,,	,,	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first or second class.
	If the offence is theft.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.,	,,	,,	,,	,,	,,	Court of Session or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
456	Lurking house-trespass or house-breaking by night.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	,,	,,	,,	,,	Imprisonment of either description for 5 years, and fine.	Court of Session or the Magistrate of the first or second class.
	If the offence is theft.	,,	,,	,,	,,	Imprisonment of either description for 14 years, and fine.	,,
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	,,	,,	,,	,,	,,	Court of Session, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	,,	,,	,,	,,	,,	,,
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	,,	,,	Bailable.	,,	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	,,	,,	,,	,,	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	CHAPTER XVIII—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.						
465	Forgery	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Court of Session, or Magistrate of the first class.
466	Forgery of a record of a Court of Justice or of a Register of Births, etc., kept by a public servant.	,,	,,	Not bailable.	,,	Imprisonment of either description for 7 years, and fine.	Court of Session.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	When the valuable security is a promissory note of the Government of India	May arrest without warrant.	,,	,,	,,	,,	,,
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session, or Magistrate of the first class.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	,,	,,	Bailable.	,,	Imprisonment of either description for 2 years, and fine.	,,
471	Using as genuine a forged document which is known to be forged.	,,	,,	,,	,,	Punishment for forgery of such document.	Same Court as that by which the forgery is triable.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	,,	,,	,,	,,	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Ranbir Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 7 years, and fine.	Court of Session.
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Ranbir Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	,,
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 467 of the Ranbir Penal Code.	,,	,,	,,	,,	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the document is one of the description mentioned in section 467 of the Ranbir Penal Code.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 7 years, and fine.	,,
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Ranbir Penal Code, or possessing counterfeit marked material.	,,	,,	,,	,,	,,	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police maarrest without warrant or not.	Whether a warrant or a summons shal ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Ranbir Penal Code, or possessing counterfeit marked material.	shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will, etc.	,,	,,	,,	,,	Imprisonment for life, or imprisonment of either description for 7 years; and fine.	,,
477 A	Falsification of accounts.	,,	,,	Bailable.	,,	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, or Magistrate of the first class.
	Of Trade and Property Marks.						
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable	Compoundable when permission is given by the Court before which the prosecution is pending.	imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	,,	,,	,,	,,	Imprisonment of either description for 2 years, or fine, or both.	,,
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	,,	Summons.	,,	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session or Magistrate of the first class.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property or trade-mark.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	,,	,,	,,	Compoundable with permission of the Court before which the prosecution is pending.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc.	,,	,,	,,	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
488	Making use of any such false mark.	,,	,,	,,	,,	,,	,,
489	Removing, destroying or defacing any property-mark with intent to cause injury.	,,	,,	,,	,,	,,	,,
	Of Currency Notes and Bank Notes.						
489 A	Counterfeiting currency-notes or bank-notes.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years and fine.	Court of Session.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
489-B	Using as genuine forged or counterfeit currency-notes or bank-notes.	May arrest without warrant.	Warrant	Not bailabale.	Not compoundable.	Imprisonment for life, or imprisonment of either description for 10 years and fine.	Court of Session.
489-C	Possession of forged or counterfeit currency-notes or bank-notes.	,,	,,	Bailable.	,,	Imprisonment of either description for 7 years, or fine, or both.	,,
489-D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	,,	,,	Not bailable.	,,	Imprisonment for life, or imprisonment of either description for 10 years, and fine.	,,
CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.							
490	Being bound by contract to render personal service during a voyage or journey or to convey or guard any property or person and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 6 months or fine of 200 rupees, or both.	Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	,,	,,	,,	,,	Imprisonment of either description for 6 months, or fine of 200 rupees, or both.	Magistrate of the first or second class.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	,,	,,	,,	,,	Imprisonment of either description for one month, or fine of double the expense incurred, or both.	,,

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not	Punishment under the Ranbir Penal Code.	By what Court triable.
	CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.						
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	,,	,,	Bailable.	,,	Imprisonment of either description for 7 years, and fine.	Court of Session
495	Some offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	,,	,,	,,	,,	Imprisonment of either description for 10 years, and fine.	,,
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	,,	,,	Not bailable.	,,	Imprisonment of either description for 5 years, and fine.	,,
497	Adultery.	,,	,,	Bailable.	Compoundable.	Imprisonment of either description for 4 years, or fine, or both.	Court of Session, or Magistrate of the first class.
[1]498	Enticing or taking away or detaining with a criminal intent a married woman	,,	,,	,,	,,	Imprisonment of either description for 5 years, or fine, or both.	Magistrate of the first or second class.

1. In section 498 "5 years" punishment substituted for "2 years" *vide* Notification No 14-L/83 published in the Government Gazette dated 29th Bhadon, 1985.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	CHAPTER XXI.—DEFAMATION.						
[1]500	(a) Defamation (other than defamation by spoken words) against the President or the Vice-President or the Governor or Rajpramukh of a State or the Sadar-i-Riyasat of the State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, when instituted upon a complaint made by the Public Prosecutor.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable with the permission of the Court before which the prosecution is pending.	Simple imprisonment for two years or fine, or both.	Court of Session.
	(b) Defamation in any other case.	,,	,,	,,	Compoundable.	,,	Court of Session, or Magistrate of the first class.
[1]501	(a) Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor or Rajpramukh of a State or the Sadar-i-Riyasat of the State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, when instituted upon a complaint made by the Public Prosecutor.	,,	,,	,,	Compoundable with the permission of the Court before which the prosecution is pending.	,,	Court of Session.

1. Substituted *vide* Act XLII of 1956 for entries relating to sections 500, 501 and 502.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
	(b) Printing or engraving matter knowing it to be defamatoty, in any other case.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Simple imprisonment for two years, or fine, or both.	Court of Session, or Magistrate of the first class.
502	(a) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice-President or the Governor or Rajpramukh of a State or Sadar-i-Riyasat of the State or a Minister or any other public servant employed inconnection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, when instituted upon a complaint made by the Public Prosecutor.	,,	,,	,,	Compoundable with the permission of the Court before which the prosecution is pending.	,,	Court of Session
	(b) Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter, in any other case.]	,,	,,	,,	Compoundable.	,,	Court of Session, or Magistrate of the first class.]

1. See footnote under entry relating to section 500.

1	2	3	4	5	6	7	8
Section of Ranbir Penal Code.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Ranbir Penal Code.	By what Court triable.
	CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.						
504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	,,	,,	Not bailable.	Not compoundable.	,,	Magistrate of the first class.
506	Criminal intimidation.	,,	,,	Bailable.	Compoundable.	,,	Magistrate of the first or second class.
	If threat be to cause death or grievous hurt, etc.	,,	,,	,,	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, or Magistrate of the first class.
507	Criminal intimidation by annonymous communication or having taken precaution to conceal whence the threat comes.	,,	,,	,,	,,	Imprisonment of either description for 2 years, in addition to the punishment under above section.	,,
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	,,	,,	,,	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.

1 Section of Ranbir Penal Code.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether baiable or not.	6 Whether compoundable or not.	7 Punishment under the Ranbir Penal Code.	8 By what Court triable.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable when permission is given by the Court before which the prosecution is pending.	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	,,	,,	,,	Not compoundable.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII—ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with imprisonment for life or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Imprisonment for life or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

1	2	3	4	5	6
If punishable with death, or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Court of Session.
If punishable with imprisonment for 3 years and upwards, but less than 7.	,,		Not bailable, except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	,,	Court of Session, or Magistrate of the first class.
If punishable with imprisonment for one year and upwards, but less than 3 years.	Shall not arrest without warrant.	Summons.	Bailable.	,,	Court of Session, or Magistrate of the first or second class.
If punishable with imprisonment for less than one year, or with fine only.	,,	,,	,,	,,	Any Magistrate.

SCHEDULE III.

(*See section* 36.)

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—ORDINARY POWERS OF A MAGISTRATE OF THE THIRD CLASS.

(1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64.
(2) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
(3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
(4) Power to issue proclamations in cases judicially before him, section 87.
(5) Power to attach and sell property and to dispose of claims to attached property in cases judicially before him, section 88.
(6) Power to restore attached property, section 89.
(7) Power to require search to be made for letters and telegrams, section 95.
(8) Power to issue search-warrants, section 96.
(9) Power to endorse a search-warrant and order delivery of thing found, section 99.
(10) Power to command unlawful assembly to disperse, section 127.
(11) Power to use civil force to disperse unlawful assembly, section 128.
(12) Power to require military force to be used to disperse unlawful assembly, section 130.
(13) Omitted.
(14) Power to authorise detention not being detention, in the custody of the police, of a person during a police-investigation, section 167.
(14-a) Power to postpone the issue of process and inquire into case himself, section 202.
(15) Power to detain an offender found in Court, section 351.
(16) Omitted.
(17) Power to apply to District Magistrate to issue commission for examination of witness, section 506 (2).
(18) Power to recover forfeited bond for appearance before Magistrate's Court, section 514, and to require fresh security, section 514-A.
(18-a) Power to make order as to custody and disposal of property pending inquiry or trial, section 516-A.
(19) Power to make order as to disposal of property, section 517.
(20) Power to sell property of a suspected character, section 525.
(21) Power to require affidavit in support of application, section 539-A.
(22) Power to make local inspection, section 539-B.

II.—ORDINARY POWERS OF A MAGISTRATE OF THE SECOND CLASS.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

(3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.

III.—ORDINARY POWERS OF A MAGISTRATE OF THE FIRST CLASS.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to discharge sureties, section 126-A.
(6-a) Power to make orders as to local nuisances, section 133.
(7) Power to make orders etc., in possession cases, sections 145, 146 and 147.
(7-a) Power to record statements and confessions during a police-investigation, section 164.
(7-aa) Power to authorise detention of a person in the custody of the police during a police-investigation, section 167.
(7-b) Power to hold inquests, section 174.
(8) Power to commit for trial, section 206.
(9) Power to stop proceedings when no complaint, section 249.
(9-a) Power to tender pardon to accomplice during inquiry into case by himself, section 337.
(10) Power to make orders of maintenance, sections 488 and 489.
(11) Power to take evidence on commission, section 503.
(12) Power to recover penalty on forfeited bond, section 514.
(12-a) Power to require fresh security, section 514-A.
(12-b) Power to re-call case made over by him to another Magistrate, section 528 (4).
(13) Power to make order as to first offenders, section 562.
(14) Power to order released convicts to notify residence, section 565.

IV.—ORDINARY POWERS OF A SUB-DIVISIONAL MAGISTRATE APPOINTED UNDER SECTION 13.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to require security for good behaviour, section 110.
(4) Omitted.
(5) Power to make orders prohibiting repetitions of nuisances, section 143.
(6) Power to make orders under section 144.
(7) Power to depute Subordinate Magistrate to make local inquiry, section 148.
(8) Power to order police-investigation into cognizable case, section 156.
(9) Power to receive report of police-officer and pass order, section 173.
(10) Omitted.
(11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.

(12) Power to entertain complaints, section 190.
(13) Power to receive police-reports, section 190.
(14) Power to entertain cases without complaint, section 190.
(15) Power to transfer cases to a Subordinate Magistrate, section 192.
(16) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(17) Power to forward record of inferior Court to District Magistrate, section 435 (2).
(18) Power to sell property alleged or suspected to have been stolen, etc., section 524.
(19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

V.—ORDINARY POWERS OF A DISTRICT MAGISTRATE.

(1) The ordinary powers of a Sub-divisional Magistrate.
(1-a) Power to try juvenile offenders, section 29-B.
(2) Power to require delivery of letters, telegrams, etc., section 95.
(3) Power to issue search-warrants for documents in custody of postal or telegraph authorities, section 96.
(4) Power to require security for good behaviour in case of sedition, section 108.
(5) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(6) Power to cancel bond for keeping the peace, section 125.
(6-a) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196-B.
(7) Power to try summarily, section 260.
(7-a) Power to tender pardon to accomplice at any stage of a case, section 337.
(8) Power to quash convictions in certain cases, section 350.
(9) Power to hear appeals from orders requiring security for keeping the peace or good behaviour, section 406.
(9-a) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, section 406-A.
(10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(11) Power to call for records, section 435.
(12) Power to order inquiry into complaint dismissed or case of accused discharged, section 436.
(13) Power to order commitment, section 437.
(14) Power to report case to High Court, section 438.
(15) Omitted.
(16) Omitted.
(17) Power to appoint person to be Public Prosecutor in particular case, section 492 (2).
(18) Power to issue commission for examination of witness, sections 503 and 506.
(19) Power to hear appeals from or revise orders passed under sections 514, 515.
(20) Power to compel restoration of abducted female, section 552.

SCHEDULE IV.

(See sections 37 and 38.)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

[1][BY THE GOVERNMENT.]	(1) Power to require security for good behaviour in case of sedition, section 108 ; (2) Power to require security for good behaviour, section 110 ; (3) Power to make orders prohibiting repetitions of nuisances, section 143 ; (4) Power to make orders under section 144 ; (5) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186 ; (6) Power to take cognizance of offences upon complaint, section 190 ; (7) Power to take cognizance of offences upon police reports, section 190 ; (8) Power to take cognizance of offences without complaint, section 190 ; (9) Power to try summarily, section 260 ; (10) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407 ; (11) Power to sell property alleged or suspected to have been stolen, etc., section 524 ; (12) Power to try cases under section 124-A of the Ranbir Penal Code.
POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.	
BY THE DISTRICT MAGISTRATE.	(1) Power to transfer cases, section 192.

1. See footnote under section 10 (2).

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	[1][BY THE GOVERNMENT]	(1) Power to make orders prohibiting repetitions of nuisances. section 143; (2) Power to make orders under section 144: (3) Power to record statements and confessions during a police-investigation, section 164: (4) Power to authorise detention of a person in the custody of the police during a police-investigation, section 167: (5) Power to hold inquests, section 174: (6) Power to take cognizance of offences upon complaint, section 190; (7) Power to take cognizance of offences upon police-reports, section 190: (8) Power to take cognizance of offences without complaint, section 190; (9) Power to commit for trial, section 206: (10) Power to make orders as to first offenders, section 562.
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to make orders under section 144. (3) Power to hold inquests, section 174. (4) Power to take cognizance of offences upon complaint, section 190. (5) Power to take cognizance of offences upon police-reports, section 190.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CALSS MAY BE INVESTED.	[1][BY THE GOVERNMENT.]	(1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to hold inquests, section 174. (3) Power to take cognizance of offences upon complaint, section 190: (4) Power to take cognizance of offences upon police-reports, section 190,

1. See footnote under section 10 (2)

	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to hold inquests, setion 174: (3) Power to take cognizance of offences upon complaint, section 190. (4) Power to take cognizance of offences upon police-reports, section 190.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	[1][BY THE GOVERNMENT]	Power to call for records, section 435.

SCHEDULE V.

(*See section* 555.)

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section* 68.)

To

of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (Magistrate) of , on the day of Herein fail not.

Dated this day of , 19 .

(*Seal.*)

(*Signature.*)

II.—WARRANT OF ARREST.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said and to produce him before me. Herein fail not.

Dated this day of 19 .

(*Seal.*)

(*Signature.*)

1. See footnote under section 10 (2)

(*See section* 6.)

This warrant may be endorsed as follows:—

If the said shall give bail himself in the sum of with one surety in the sum of (*or* two sureties each in the sum of) to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of 19 .

(*Signature.*)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section* 86.)

I, (*name*) of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next, to answer to the said charge, and to continue so to attend until otherwise directed by Court; and, in case of my making default herein, I bind myself to forfeit, to the Government, the sum of rupees .

Dated this day of , 19 .

(*Signature.*)

I do hereby declare myself surety for the above-named of , that he shall attend before in the Court of on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit, to the Government, the sum of rupees .

Dated this day , 19 .

(*Signature.*)

IV.- PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Ranbir Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said and of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint on the day of .

Dated this day of , 19 .

(*Seal.*)

(*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock to be examined touching , the offence complained of.

Dated this day of , 19 .

(*Seal.*)

(*Signature.*)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section* 88.)

To the Police-officer in charge of the Police-station at .

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein.

This is to authorise and require you to attach by seizure the movable property belonging to the said to the value of rupees which you may find within the district of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement

certifying the manner of its execution.

Dated this day of , 19 .

(*Seal.*) (*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Ranbir Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation has been or is being duly issued and pnblished requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the district of ,*viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 19 .

(*Seal.*) (*Signature.*)

ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the officer in charge, Police-station of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Ranbir Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is

concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the district of ;

You are hereby authorised and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 19 .

(*Seal.*) (*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section* 90.).

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court this day of , 19 .

(*Seal.*) (*Signature.*)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section* 96.)

To (*name and designation of the Police officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*) and it has been made to appear to me that the production of (specify the thing clearly) is essential to the inquiry now being made (*or* about to be made) into the said offence *or* suspected offence);

This is to authorise and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof to which the search is to be confined*), and if found, to produce the same forthwith before this Court returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section* 98.)

To (*name and designation of a Police-officer above the rank of a constable*).

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorise and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*), and to seize and take possession of any property (*or* documents, *or* stamps *or* seals, [1][*or* obscene objects,] *as the case may be*)— [Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps *or* false seals, *or* counterfeit coin (*as the case may be*)], and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

X.—BOND TO KEEP THE PEACE.

(*See section* 107.)

WHEREAS I, (*name*), inhabitant of (*place*) have been called upon to enter into a bond to keep the peace for the term of or until the completion of the inquiry in the matter of now pending in the Court of . I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a

1. Added *vide* Notification No. 15-L/83 published in the Government Gazette dated 29th Bhadon, 1983.

breach of the peace, during the said term, or until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(Signature.)

XI.—BOND FOR GOOD BEHAVIOUR.

(*See sections* 108, 109 *and* 110.)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to the Government and to all Subjects of the State for the term of (*state the period*), or until the completion of the inquiry in the matter of now pending in the Court of , I hereby bind myself to be of good behaviour to the Government and to all Subjects of the State during the said term or until the completion of the said inquiry ; and, in case of my making default therein, I bind myself to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(Signature.)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to the Government and to all Subjects of the State during the said term or until the completion of the inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(Signature.)

XII.—SUMMONS OF INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section* 114.)

To of .

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorised agent), at the Office of the Magistrate of on the day of , 19 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add,* and also to give security by the bond of one (*or* two

as the case may be) surety (*or* sureties) in the sum of rupees (each *if more than one*)] that you will keep the peace for the term of .

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature*),

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name and address*) appeared before me in person (*or* by his authorised agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he, the said (*name*), would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*) and he has failed to comply with the said order;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*), into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime be lawfully ordered to be released and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section* 123.)

To the Superintendent (*or* keeper) of the Jail at .

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself) ;

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded, from which it

appears that he is an habitual robber (*or* house-breaker, etc., *as the case may be*);

AND WHEREAS an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime be lawfully ordered to be released and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at
(*or other officer in whose custody the person is*):

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of the Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure ;

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section* 133.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*) which, etc., (*describe the road or public place*), by, etc., (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered, by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced) ;

or

WHEREAS, etc., etc., (*as the case may be*) ;

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc. ;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*) ; or to appear, etc. ;

or

I do hereby direct and require you, etc., etc., (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal*). (*Signature.*)

———

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section* 138.)

WHEREAS on the day of 19 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me, by a petition bearing date the day of , for an order appointing a jury to try whether the said recited order is reasonable and proper ; I do hereby appoint (*the names, etc. of the five or more jurors*) to be jury to try and decide the said question, and do require the said jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XVIII —MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section* 140.)

To (*name, description and address.*)

I HEREBY give you notice that the jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*), on peril of the penalty provided by the Ranbir Penal Code for disobedience thereto.

Given under my hand and the seal of the Court this day, of , 19 .

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a jury appointed to try whether my order issued on the day of 19 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly*

what is required to be done as a temporary safeguard), pending the result of the local inquiry by the jury.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

———

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A NUISANCE.

(*See section* 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, etc., (*state the proper recital, guided by* Form No. XVI, or Form No. XXI, *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc., (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

———

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(*See section* 144.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*) and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, etc., (*as the case may be*), and that such procession is likely to lead to a riot or an affray ;

or

WHEREAS etc., etc., (*as the case may be*) ;

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE.

(*See section* 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true;

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XXIII. WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(*See section* 146.)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state

in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorise and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(*See section* 147.)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*) and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or, if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is, capable of being enjoyed").

I do order that the said (*the claimant or claimants of possession*) or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section* 169.)

I, (*name*), of , being charged with the offence of and after inquiry required to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein I bind myself to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(*Signature.*)

I, hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the abovesaid that he shall attend at , in the Court of ; on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(*Signature.*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section* 170.)

I (*nnme*), of (*place*), do hereby bind myself to attend at in the Court of at o'clock on the day of next and then and there to prosecute (*or* to prosecute and give evidence) (*or* to give evidence) in the matter of a charge of against one A. B., and, in case of making default herein, I bind myself to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(*Signature.*)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(*See section* 218.)

THE Magistrate of hereby gives notice that he has committed one for trial at the next Sessions ; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*).

Dated this day of , 19 .

(*Signature.*)

XXVIII.—CHARGES.

(*See sections* 221, 222 *and* 223.)

(1)—CHARGES WITH ONE HEAD.

(*a*) I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*) as follows :—

On Penal Code section 121.

(*b*) that you, on or about the day of , waged war against the Government of India or the Government and thereby committed an offence punishable under section 121 of the Ranbir Penal Code, and within the cognizance of the Court of Session.

(*c*) And I hereby direct that you be tried by the said Court in the said charge.

(*Signature and seal of the Magistrate.*)

[*To be substituted for* (*b*)]:—

On section 124.

(2) That you, on or about the day of at , with the intention of inducing the Hon'ble A. B., Minister of the Government, to refrain from exercising a lawful power as such Minister, assaulted such Minister, and thereby committed an offence punishable under section 124 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

On section 161.

(3) That you, being a public servant in the Department, directly accepted from (*state the name*), for another party (*state the name*), a gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

On section 166.

(4) That you, on or about the day of , at , did (*or* omitted to do, *as the case may be*) such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court)

(5) That you, on or about the day of , at , in the course of trial of before ,
On section 193. stated in evidence that" ;"
which statement you either knew or believed to be false or did not believe to be true, and thereby committed an offence punishable, under section 193 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(6) That you, on or about the day of , at , committed culpable homicide not amounting to
On section 304. murder, causing death of , and thereby committed an offence punishable under section 304 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(7) That you, on or about the day of , at , abetted the commission of suicide by A.B., a person
On section 306. in a state of intoxication, and thereby committed an offence punishable under section 306 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to ,
On section 325. and thereby committed an offence punishable under section 325 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(9) That you, on or about the day of , at , robbed (*state the name*), and thereby committed an
On section 392. offence punishable under section 392 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under
On section 395. section 395 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (c) *omit* "by the said Court."

(II).—CHARGES WITH TWO OR MORE HEADS.

(a) I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*) as follows :—

(b) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine,
On section 241. and thereby committed an offence punishable under section 241 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit attempted to induce another person, by name A. B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(c) And I hereby direct that you be tried by the said Court on the said charge.

(*Signature and seal of the Magistrate.*

[*To be substituted for* (*b*)] :—

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

On sections 302 and 304.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

On sections 379 and 382.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

(4) That you, on or about the day of , at , in the course of the inquiry into , before stated in evidence that " ", and that you, on or about the day of at , in the course of the trial of , , before , stated evidence that " ", one of which

Alternative charges on section 193.

statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Ranbir Penal Code, and within the cognizance of the Court of Session (*or* High Court).

[*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session" *and in* (*c*) *omitt* "by the said Court"].

(III).—CHARGE FOR THEFT AFTER PREVIOUS CONVICTION.

I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*)as follows :—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Ranbir Penal Code, and within the cognizance of the Court of Session [*or* High Court/Magistrate *as the case may be*].

And you, the said (*name of accused*), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Ranbir Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of Ranbir Penal Code.

And I hereby direct that you be tried, etc.

———

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of 19 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 19 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Ranbir Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

———

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY ATTACHMENT AND SALE.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed as false and frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of the complainant*) of the sum of rupees as amends ; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of days, unless the aforesaid sum be sooner paid ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Ranbir Penal Code, unless the said sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXXI.—SUMMONS TO WITNESS.

(*See sections* 68 *and* 252.)

To of .

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely with time and place*), and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the day of next at 10 o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON [1][JURORS].

(*See section* 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of [1][Jurors] furnished to this Court ; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of* [1][*Jurors*])

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XXXIII.—SUMMONS TO [2][JUROR].

(*See section* 328.)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as [3][Juror] at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at 10 o'clock in the forenoon on the day of next.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XXXIV—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at the Session held before me on the day of 19 , (*name of the prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner, in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Ranbir Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

1. Substituted *vide* Act XLII of 1956 for "Assessers".
2. Substituted *vide ibid* for "Assessor".
3. Substituted *vide ibid* for "an Assessor".

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of , 19 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at a Session held on the day of , 19 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of punishable under section of the Ranbir Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of imprisonment for life (*or as the case may be*);

This is to authorise and require you, the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail", "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature*)

XXXVII—WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE.

(*See section* 386(1)(*a*).)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS (*name and description of the offender*) was on the day of 19 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees ; and whereas the said (*name*) although required to pay the said fine, has not paid the same or any part thereof;

This is to authorise and require you to attach any movable property belonging to the said (*name*) which may be found within the district of ; and, if within (*state the number of days or hours allowed*) next after such attachment the said sum shall not be paid (*or forthwith*), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XXXVII-A.—BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE.

(*See section* 388.)

WHEREAS I, (*name*), inhabitant of (*place*), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for ; and whereas the Court has

been pleased to order my release on condition of my executing a bond for my appearance on the following date (*or* dates), namely:—

;

I bind myself to appear before the Court of at o'clock on the following date (*or* dates), namely:—

and in case of making default herein, I bind myself to forfeit to the Government the sum of rupees .

Dated this day of ,19 .

(*Signature.*)

Where a bond with sureties is to be executed, add—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of at on the following date (*or* dates) namely:— and in case of his making default therein, we bind ourselves jointly and severally to forfeit to the Government the sum of rupees .

(*Signature.*)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at a Court holden before me on this date (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt ;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorise and require you, the Superintendent (*or* Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless the fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(*See section* 485.)

To (*name and description of officer of Court*).

WHEREAS (*name and description*), being summoned (*or* brought before this Court) as a witness this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorise and require you to take the said (*name*) into custody, and him safely to keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section* 488.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*), [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (or refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ; And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE.

(See section 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month of (*or* months) of ;

This is to authorise and require you to attach any movable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such attachment the said sum shall not be paid (*or forthwith*), to sell the movable property attached, or so much thereof as shall be sufficient satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under if, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See sections 496 *and* 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and, should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to the Government the sum of rupees .

Dated this day of , 19 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and, in case of making default therein, I bind myself (or we bind ourselves) to forfeit to the Government the sum of rupees .

Dated this day of , 19 . (*Signature.*)

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section* 500.)

To the Superintendent (*or* Keeper) of the Jail at
(*or other officer in whose custody the person is*)

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section* 514.)

To the Police-officer in charge of the Police-station at .

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to the Government the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said (*name*) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid,

and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLV.—NOTICE TO SURETY ON BREACH OF BOND.

(*See section* 514.)

To of .

WHEREAS on the day of , 19 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to the Government; and whereas the said (*name*) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLVI.—NOTICE TO SURETY OF FORFEITURE FOR BOND OF GOOD BEHAVIOUR.

(*See section* 514.)

To of ,

WHEREAS on the day of 19 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of rupees to the Government ; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited ;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLVII .—WARRANT OF ATTACHMENT AGAINST A SURETY.

(*See section* 514.)

To of

WHEREAS, (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to the Government the sum of rupees (*the penalty in the bond*) ;

This is to authorise and require you to attach any movable property of the said (*name*) which you may find within the district of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature.*)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS (*name aud description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*) and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to the Government ; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recoverd by attachment and sale of movable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*) ;

This is to authorise and require you, the said Superintendent (*or* Keeper), or receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*) (*Signature*)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name, description and address*).

WHEREAS on the day of , 19 , you entered into a bond not to commit, etc., (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 19 .

(*Seal.*)

(*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name and designation of Police-officer*), at the Police-station of .

WHEREAS (*name and description*) did, on the day of , 19 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

LI.—WARRANT OF IMPRSIONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to the Government the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

LII. WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the Police-officer in charge of the Police-station at .

WHEREAS (*name, description and address*) did, on the day of 19 , give security by bond in the sum of rupees for the good behaviour of (*name, etc., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at .

WHEREAS (*name, description and address*) did, on the day of 19 , give security by bond in the sum of rupees for the good behaviour of (*name, etc., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to the Government the sum of rupees , and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*) ;

This is to authorise and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Signature.*)

(*Seal.*)

ADDENDUM

TO

VOLUME—II

The Addendum brings Volume II amended up to January, 1, 1958.

I. By the Jammu and Kashmir (Extension of Laws) Act, 1956 (Central Act 62 of 1956) the Negotiable Instruments Act, 1881 (Central Act 26 of 1881) was extended to the State of Jammu and Kashmir. The Negotiable Instruments Act, Samvat 1977 of the State stands repealed except Chapter XVII relating to "Notaries Public" from 1st November, 1956, the date from which the Central Act 62 of 1956 came into force. Accordingly a modified form of the "Negotiable Instruments Act" is attached herewith to be placed for the original Act in this Volume at pages 45 to 82.

THE NEGOTIABLE INSTRUMENTS ACT, 1977 (1920 A. D.)

Act No. XXVII of 1977

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Omitted.

2. Omitted.

3. Interpretation-clause.

4-137. Omitted.

CHAPTER XVII.

NOTARIES PUBLIC.

138. Power to appoint notaries public.

139. Power to make rules for notaries public.

---

[1]NEGOTIABLE INSTRUMENTS ACT, 1977 (1920 A. D.)

Act No. XXVII of 1977.

[*Sanctioned by* ***His*** *Highness the Maharaja Sahib* ***Bahadur*** *per Chief Minister's endorsement No.* 8,372, *dated* 11*th September*, 1940 *and State Council Resolution No.* 1, *dated* 8*th April*, 1925. (*Notification No.* 14-*L*/81).]

[2]Long title
Preamble
Section 1
} Omitted.

Interpretation-clause.

3. In this Act,

× × ×

"Notary public" includes also any person appointed by [3][the Government] to perform the functions of a notary public under this Act

[4]Sections 4 to
Section 137
} Omitted.

CHAPTER XVII.

NOTARIES PUBLIC.

Power to appoint notaries public.

138. [3][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

---

1. The Law with respect to bills of exchange, cheques, promissory notes and like instruments is now contained in the Negotiable Instruments Act, 1881 (Central Act No. 26 of 1881) which has been made applicable to the State by the Jammu and Kashmir (Extension of Laws) Act, 1956 (Central Act No. 62 of 1956). This Act replaces the provisions relating to negotiable instruments contained in the Jammu and Kashmir Negotiable Instruments Act, 1977 (XXVII of 1977). The provision with respect to "Notaries public", however, as contained in that Act cannot be taken as repealed. The State Act containing only such provisions has, therefore, been included in this compilation.

2. Long title, preamble and section 1 omitted *vide* Central Act 62 of 1956 with effect from 1st November, 1956.

3. Substituted *vide* Act X of 1996 for "His Highness".

4. Sections 4 to 137 omitted *vide* Central Act 62 of 1956 with effect from 1st November, 1956.

139. [1][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

Power to make rules for notaries public.

---

1 Substituted *vide* Act X of 1996 for "His Highness".

II. **Registration Act, Samvat 1977 (Page 185).**

In clause (xii) of sub-section (2) of section 17 the word "omitted" shall be deleted and the following shall be inserted therefor, namely :—

"Any instrument which purports or operates to transfer land in favour of State or a Panchayat constituted under the Jammu and Kashmir Village Panchayat Act, 2008."

Vide Act XXXII of 1956.

III. CODE OF CRIMINAL PROCEDURE, SAMVAT 1989 (1938 A. D.)

Amendment in the Code of Criminal Procedure, Samvat 1989, (hereinafter referred as the "said Act")—

1. Amendment on page 890 of the Act :

In sub-section (3) of section 10 the figures, word and brackets "407, sub-section (2)" shall be omitted.

Vide Act XXVII of 1957 (w.e.f.)

2. Amendment on page 922 of the said Act :

In sub-section (3) of section 106 the words and figures "including a Court hearing appeals under section 407" shall be omitted.

Vide Act XXVII of 1957 (w.e.f.)

3. Amendment on page 965 of the said Act :

For section 197 substitute the following section, namely :—

Prosecution of Judges and public servants.

"197. (1) When any person who is a Judge within the meaning of section 19 of the Ranbir Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the State Government or the Government of India, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no Court shall take cognizance of such offence except with the previous sanction—

(a) in the case of persons employed in connection with the affairs of the Union, of the Government of India; and

(b) in the case of persons employed in connection with the affairs of the State, of the State Government.

(2) The Government of India or the State Government, as the case may be, may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Vide Act XXVII of 1957 (w.e.f.)

4. Amendment on page 965 of the said Act:

After section 197, the following section shall be inserted as section 197-A, namely :—

Prosecution of Rulers of former Indian States.

"197-A. (1) In this section—

(a) "former Indian State" means any such Indian State as the Government of India may, by notification in the Official Gazette, specify for the purposes of this section;

(b) "Ruler" in relation to a former Indian State, means the person who for the time being is recognised by the President as the Ruler of that State for the purposes of the Constitution of India.

(2) No Court shall take cognizance of any offence alleged to have been committed by the Ruler of a former Indian State except with the previous sanction of the Government of India.

(3) The provisions of sub-section (2) of section 197 shall apply in relation to the prosecution and trial of the Ruler of a former Indian State as they apply in relation to the prosecution and trial of a Judge."

Vide Act XXVII of 1957 (w.e.f.)

5. Amendment on page 966 and 967 of the said Act:

The existing section 198-A shall be renumbered as section 198-B, and in sub-section (6) of section 198-B as so renumbered, the words "or the Governor or the Rajpramukh of a State" shall be inserted after the words "Vice-President"; and the following new section shall be inserted before section 198-B as so renumbered, namely:—

Prosecution for offence of martial misbehaviour.

"198-A. No Court shall take cognizance of an offence under section 376 of the Ranbir Penal Code, where such offence consists of sexual intercourse by a man with his own wife, the wife being under fourteen years of age, if more than one year has elapsed from the date of the commission of the offence".

Vide Act XXVII of 1957 (w.e.f.)

6. Amendment on page 970 of the said Act :

For proviso to sub-section (1) of section 202 the following shall be substituted, namely :—

"Provided that, save where the complaint has been made by a Court, no such directions shall be made unless the complainant has been examined on oath under the provisions of section 200."

Vide Act XXVII of 1957 (w.e f.)

7. Amendment on page 972 of the said Act :

In sub-section (2) of the section 206 the words "unless the Government or the High Court directs the commitment of a case to the High Court" shall be omitted.

Vide Act XXVII of 1957 (w e f.)

8. Amendment on page 1054 of the said Act :

Afer section 411, the following section shall be inserted as section 411-A, namely :—

Appeal from sentence of High Court.

"411-A. (1) Any person convicted on a trial held by the High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423 sub-section (2), or in the Letters Patent or law by which the High Court is constituted or continued, appeal to the High Court—

(a) against the conviction on any ground of appeal which involves a matter of law only;

(b) with the leave of the appellate Court, or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground of appeal ; and

(c) with the leave of the appellate Court, against the sentence passed unless the sentence is one fixed by law.

(2) Notwithstanding anything contained in section 417, the Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (2) or in the Letters Patent or law by which the High Court

is constituted or continued, but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Divisional Court of the High Court composed of not less than two Judges, being Judges other than the Judge or Judges by whom the original trial was held; and if the constitution of such a Division Court is impracticable, the High Court shall report the circumstances to the Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(4) Subject to such rules as may from time to time be made by the Supreme Court in this behalf, and to such conditions in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the Supreme Court from any order made on appeal under sub-section (1) by a Division Court or the High Court in respect of which order the High Court certifies that the case is a fit one for such appeal.

Vide Act XXVII of 1957 (w. e. f.)

9. Amendment on page 1054 of the said Act :

In section 412 for the words "by a Court of Sessions" the words "by the High Court, a Court of Session" shall be substituted.

Vide Act XXVII of 1957 (w e. f.)

10. Amendment on page 1055 of the said Act :

For section 413 the following shall be substituted, namely :—

"413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which the High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only.

No appeal in petty cases.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default

of payment of fine when no substantive sentence of imprisonment has also been passed.

Vide Act XXVII of 1957 (w. e. f.)

11. Amendment on page 1055 of the said Act :

In section 415 for the words "any two or more of the punishments therein mentioned are combined" the words "any punishment therein mentioned is combined with any other punishment" shall be substituted.

Vide Act XXVII of 1957 (w. e. f.)

12. Amendment on page 1056 of said Act :

At the end of section 417 the following explanation shall be inserted, namely :—

"*Explanation.*—For the purposes of this section the expression "Public Prosecutor" shall include and shall be deemed always to have included the Advocate General".

Vide Act XXVII of 1957 (w. e. f.)

13. Amendment on page 1056 of the said Act :

For section 418 the following section shall be substituted, namely :—

"418. (1) An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only

Appeal on what matters admissible.

(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.

Explanation —The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Vide Act XXVII of 1957 (w. e. f.)

14. Amendment on page 1056 of the said Act :

At the end of section 419 the following words shall be added, namely :—

"and in cases tried by a jury, a copy of the heads of the charge recorded under section 367."

Vide Act XXVII of 1957 (w. e. f.)

15. Amendment on page 1058 of the said Act :

After sub-section (1) of section 423 the following shall be substituted as sub-section (2) (*for* "(2) Omitted."), namely :—

"(2) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

Vide Act XXVII of 1957 (w. e. f.)

16. Amendment on page 1058 of the said Act :

In section 424 for the words "a High Court" the words "the High Court" shall be substituted.

Vide Act XXVII of 1957 (w. e. f.)

17. Amendment on page 1060 of the said Act :

For section 430 the following section shall be substituted, namely :—

"430. Judgments and orders passed by an appellate Court upon appeal shall be final except in the cases provided for in section 417 and Chapter XXXII."

Finality of orders on appeal.

Vide Act XXVII of 1957 (w. e. f.)

18. Amendment on page 1060 of the said Act :

In Chapter XXXII, the following new sections shall be inserted, namely :—

"432. (1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act or Ordinance or of any provision contained in an Act or Ordinance, the determination of which is necessary for the disposal of the case, and is of opinion that such Act or Ordinance or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state

Reference to High Court.

a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

(2) Any Court making a reference to the High Court under sub-section (1) may, pending the decision of the High Court thereon, either commit the accused to Jail or release him on bail to appeal when called upon.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

(2) The High Court may direct by whom the costs of such reference shall be paid."

Vide Act XXVII of 1957 (w. e. f.)

19. Amendment on page 1060 of the said Act:

In section 435 after the words "the execution of any sentence" the words "or an order" shall be inserted.

Vide Act XXVII of 1957 (w. e. f.)

20. Amendment on page 1062 of the said Act:

In section 438 after the words "a sentence" and "such sentence" the words "or an order" and "or order" shall respectively be inserted.

Vide Act XXVII of 1957 (w. e. f.)

21. Amendment on page 1070 of the said Act:

The explanation to sub-section (1) of section 479-A shall be omitted.

Vide Act XXVII of 1957 (w. e. f.)

22. Amendment on pages 1081 to 1083 of the said Act:

For sections 503 to 508 the following sections shall be substituted as sections 503 to 508-A, namely:—

"503. Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to the High Court, Court of Session, or any Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or in-

When attendance of witness may be dispensed with and commission issued.

convenience which, under the circumstances of the case, would be unreasonable, such Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter :

Provided that where the examination of the President or the Vice-President or the Governor or Rajpramukh of a State or the Sadar-i-Riyasat of the State is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

Commission to whom to be issued.

504. (1) If the witness is within the territories to which this Code extends, the commission shall be directed to the District Magistrate within the local limits of whose jurisdiction the witness is to be found.

(2) If the witness is in India, the commission shall be directed to such Court or Officer as the Government of India may by notification in the Official Gazette, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Government of India with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or Officer and sent to such authority for transmission, as the Government of India may, by notification in the Official Gazette, prescribe in this behalf.

Execution of commission.

505. Upon receipt of the commission, the District Magistrate, or such Magistrate as he may appoint in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers, as in trials of warrant cases under this Code.

Parties may examine witnesses.

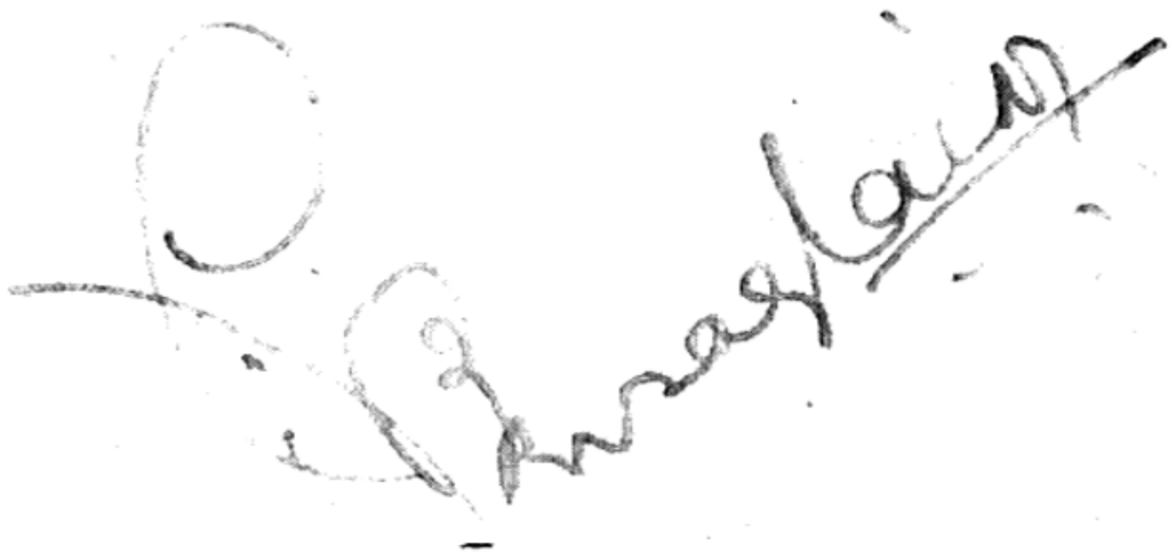
506. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or Officer to whom the commission is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate, Court or Officer by pleader, or if not in custody, in person

K UNIVERSITY LIB.
U4328.

SYED - RIYAZ - KHAWER.

سید ریاض خاور



Ejhk ... Dang Nok ...